

Attachment 1

Revised DEIS Tables, Figures, and Additional Appendix Materials

Attachment 1

Revised DEIS Tables

Table 4-1

Affected Environment – Transportation and Infrastructure Projects

Map ID No.*	Address/ Name	Inside or Outside ½-Mile Study Area?	Block	Lot	Program	Build Year†
A	Hudson Tunnel	Inside	N/A	N/A	New rail tunnel, associated ventilation infrastructure, and full rehabilitation of the NRT	2026‡
B	NYCDOT Parking-Protected Bicycle Lane	Inside	N/A	N/A	A parking-protected bicycle lane on the east curb of Ninth Avenue will be installed between West 31st and West 33rd Streets. A mid-block crossing will be installed on Ninth Avenue between West 31st and West 33rd Streets.	2022
C	Moynihan Station – Train Hall and Platform Access	Inside	755	40	Includes 297,809 gsf of transportation infrastructure improvements, including platform access, and new Train Hall	2021
D	NRT Interim Reliability Improvements	Inside	N/A	N/A	Various reliability Improvements for the NRT in advance of planned complete rehabilitation connected with the Hudson Tunnel Project.	TBD
E	West Side Yard/Hudson Yards Perimeter Protection	Inside	676 and 702	5, 125, 150, 175, 180	Resiliency project to construct protection for the West Side Yard	2026
F	NYCEDC W. 33rd Street Viaduct	Inside	N/A	N/A	West 33rd Street will be regraded between Eleventh and Twelfth Avenues in order to accommodate construction over Hudson Yards.	2026
G	NYCDOT Street Modifications	Outside	N/A	N/A	The west sidewalk on Eighth Avenue, between West 33rd and West 39th Streets, will be widened, and the roadway will be narrowed to two travel lanes with left-turn bays.	2021
H	NYCDOT Bicycle Lane Extension	Outside	N/A	N/A	The existing bicycle lane on Seventh Avenue will be extended north of West 30th Street, and the adjacent taxi stand will be modified.	2022
I	East Side Access Project	Outside	N/A	N/A	The project provides for LIRR trains to travel to travel to Grand Central Terminal in addition to New York Penn Station	2022
J	Metro-North Penn Station Access	Outside	N/A	N/A	The project provides for Metro-North trains to travel to travel to New York Penn Station	TBD
K	Dock Bridge Replacement Project	Outside	N/A	N/A	The Dock Bridge Project would replace a pair of vertical lift bridges crossing the Passaic River.	2024
<u>L</u>	<u>High Line Moynihan Connector Civic Project</u>	<u>Inside</u>	<u>728</u>	<u>1</u>	<u>The project will connect the High Line to the New Moynihan Train Hall</u>	<u>2022</u>

Notes:

* See Figure 4-1.

† Projects for which an expected date of completion is not available are assumed to be complete by 2026. Assumptions of completion dates provide for a conservative analysis of potential project effects.

‡ Completion of the Hudson Tunnel project has been delayed from the 2026 completion indicated in the DEIS, but construction would still overlap with construction of the Preferred Alternative. This EIS has retained the earlier completion date for a conservative analysis of potential impacts.

Reader Note: This table has been modified from what was in the DEIS in response to comments from “MOEC_001,” Comment #7, 8, & 9. Changes are shown as double-underlined text. Appendix C3 contains the comments received on the DEIS and responses to those comments.

Table C2-4A
24-Hour Distribution of Truck Trips

Hours	Platform: Truck Trips In	Platform: Truck Trips Out	Concrete Casing: Truck Trips In	Concrete Casing: Truck Trips Out
6-7 AM	14	14	9	9
7-8 AM	3	3	3	3
8-9 AM	3	3	3	3
9-10 AM	3	3	3	3
10-11 AM	3	3	3	3
11-12 PM	3	3	3	3
12-1 PM	3	3	3	3
1-2 PM	3	3	3	3
2-3 PM	3	3	2	2
3-4 PM	3	3	0	0
4-5 PM	3	3	0	0
5-6 PM	3	3	0	0
6-7 PM	3	3	0	0
7-8 PM	3	3	0	0
8-9 PM	3	3	0	0
9-10 PM	3	3	0	0
10-11 PM	0	0	0	0
11-12 PM	0	0	0	0
12-1 AM	0	0	0	0
1-2 AM	0	0	0	0
2-3 AM	0	0	0	0
3-4 AM	0	0	0	0
4-5 AM	0	0	0	0
5-6 AM	0	0	0	0
24-Hour Totals	55	55	34	34

Reader Note: This table is new to the FEIS, added in response to "MOEC_001," Comment #16. Appendix C3 contains the comments received on the DEIS and responses to those comments.

Table 8-4
CEQR Criteria and Preferred Alternative Noise Levels in dB(A)

Receptor Site	Existing Noise Level (L_{eq1h})	Total Noise Level with the Preferred Alternative	Preferred Alternative Noise Level Increment	CEQR Level of Impact*
2a: 15 Hudson Yards	66.5	66.6	0.1	No Impact
2c: 35 Hudson Yards	66.5	66.6	0.1	No Impact
3b: 610 West 30th Street	62.9	63.1	0.2	No Impact

Notes:

* Total Build increment for the Preferred Alternative was compared to the *CEQR Technical Manual* thresholds to determine the potential for an adverse impact.

Reader Note: Table 8-4 is new to the FEIS, added in response to "MOEC_001," Comment #27. Appendix C3 contains the comments received on the DEIS and responses to those comments.

Table 13-4
Preferred Alternative Energy Consumption

Use	Size	Average Annual Energy Rate (Thousand BTUs/sf/year)	Energy Consumption (Thousand BTUs/Year)
LIRR Service Facilities	39,422 sf	216.3*	8,526,979
<u>Ventilation System</u>	N/A	<u>N/A†</u>	<u>9,800,000</u>
Total			<u>18,326,979</u>

Notes:

* Rate is from the *CEQR Technical Manual* Table 15-1; proposed LIRR facilities assumed to consume energy at the rates of commercial office space for purposes of analysis, excluding energy consumption for the traction power system or Platform ventilation system.

† Ventilation system annual energy consumption estimate is based on operational assumptions developed by Ove Arup & Partners P.C. These assumptions are being used only for NEPA analysis purposes, with the understanding that the final estimated energy consumption figures are subject to change based upon MTA's review and approval of the Western Rail Yard platform design to ensure conformance with the Project Sponsor's contractual requirements, including without limitation, applicable design criteria and LIRR operations.

Reader Note: Table 13-4 has been modified from what was in the DEIS in response to comments from "MOECI_001," Comment #41. Changes are shown as double-underlined text. Appendix C3 contains the comments received on the DEIS and responses to those comments.

Table D-4
Fugitive Dust Emissions from Excavated Material Transfer

Location	Short-Term Peak Period Dump Trucks (veh/day)	Annual Peak Period Dump Trucks (veh/day)	Transfer/Drop PM ₁₀ Emission Factor (lb/ton soil) *†	Short- Term Emission Rate PM ₁₀ (g/s)‡	Short- Term Emission Rate PM _{2.5} (g/s)‡	Annual PM _{2.5} Emission Rate (g/s)‡
Area 1A: Tracks 27-30	0	0	2.97E-04	0.00E+00	0.00E+00	0.00E+00
Area 1B: Tracks 23-26	20	14	2.97E-04	2.43E-03	3.69E-04	2.61E-04
Area 1C: Tracks 19-22	0	3	2.97E-04	0.00E+00	0.00E+00	4.61E-05
Building C (Substation)	0	2	2.97E-04	0.00E+00	0.00E+00	3.07E-05
Tunnel	20	20	2.97E-04	2.43E-03	3.69E-04	3.69E-04

Notes:

The number of trucks are presented for the short-term and annual peak periods selected for analysis, and may not reflect the maximum number of trucks.

* Emission factors for soil transfer operations are based on Equation 1 from Section 13.2.4 of AP-42. Calculations used a 5-year average mean wind speed of 11.5 miles per hour from observed meteorological data and an 11 percent material moisture content as specified in Table 13.2.4-1 of AP-42 (for overburden).

† The empirical constant of 0.35 for PM₁₀ was used to estimated dust emission factors presented. PM_{2.5} dust emissions were estimated by scaling the PM₁₀ emission factor using the PM_{2.5} empirical constant of 0.053 compared to the PM₁₀ empirical constant (a scaling ratio of 0.151).

‡ Emission rates were estimated assuming a dump truck maximum capacity of 20 CY, a soil density of 2.6 tons per CY, and all emissions would occur within an 8-hour per day work shift.

Fugitive dust emissions associated with on-site truck movements over unpaved and paved surfaces were estimated (see **Tables D-5** and **D-6**) assuming average vehicle weights of 17.5 tons for dump trucks and 20 tons for both concrete trucks and tractor trailer trucks. It was assumed that all dump trucks would travel over unpaved surfaces and concrete and tractor trailer trucks would travel over paved surfaces.

Table D-5
Fugitive Dust Emissions from Unpaved Surfaces

Location	Short-Term Peak Period Dump Trucks (veh/day)	Annual Peak Period Dump Trucks (veh/day)	PM ₁₀ Travel Emission Factor (lb/VMT)*,†	Short-Term Emission Rate (g/s)‡ PM ₁₀	Short-Term Emission Rate (g/s)‡ PM _{2.5}	Annual PM _{2.5} Emission Rate (g/s)‡
Area 1A: Tracks 27-30‡	0	0	2.43	0.00E+00	0.00E+00	0.00E+00
Area 1B: Tracks 23-26‡	20	14	2.43	1.31E-02	1.31E-03	9.25E-04
Area 1C: Tracks 19-22‡	0	3	2.43	0.00E+00	0.00E+00	1.63E-04
Building C (Substation)‡	0	2	2.43	0.00E+00	0.00E+00	1.09E-04
Tunnel§	20	20	2.43	7.25E-03	7.25E-04	7.25E-04

Notes:

The number of trucks are presented for the short-term and annual peak periods selected for analysis, and may not reflect the maximum number of trucks.

* Emission factors for vehicle travel over unpaved surfaces are based on Equation 1a from Section 13.2.2 of AP-42. Calculations used a surface material silt content of 8.5 percent silt for a construction site (selected from AP-42 Table 13.2.2-1) and empirical constant elected from AP-42 Table 13.2.2-2.

† The empirical constant, k, of 1.5 lb/VMT for PM₁₀ was used to estimate dust emission factors. The remaining empirical constants of 0.9 and 0.45 (a and b, respectively) were used for both PM₁₀ and PM_{2.5}. Therefore, PM_{2.5} dust emissions were estimated by scaling the PM₁₀ emission factor using the PM_{2.5} empirical constant, k, of 0.15 lb/VMT compared to the PM₁₀ empirical constant (a scaling ratio of 0.1).

‡ Emission rates were calculated assuming a vehicle round trip distance of 180 feet.

§ Emission rates were calculated assuming a vehicle round trip distance of 50 feet.

Table D-6
Fugitive Dust Emissions from Paved Surfaces

Location	Short-Term Peak Period Trucks* (veh/day)	Annual Peak Period Trucks* (veh/day)	PM ₁₀ Travel Emission Factor (lb/VMT)†‡	Short-Term Emission Rate (g/s)‡ PM ₁₀	Short-Term Emission Rate (g/s)‡ PM _{2.5}	Annual PM _{2.5} Emission Rate (g/s)‡
Area 1A: Tracks 27-30§	8	11	1.04E-01	2.23E-04	5.46E-05	7.65E-05
Area 1B: Tracks 23-26§	10	12	1.04E-01	2.78E-04	6.83E-05	8.14E-05
Area 1C: Tracks 19-22§	0	0	1.04E-01	0.00E+00	0.00E+00	0.00E+00
Building C (Substation)§	0	0	1.04E-01	0.00E+00	0.00E+00	0.00E+00
Tunnel¶	16	14	1.04E-01	2.47E-04	6.07E-05	5.37E-05

Notes:

The number of trucks are presented for the short-term and annual peak periods selected for analysis, and may not reflect the maximum number of trucks.

* All concrete and tractor trailer trucks were assumed to travel over paved surfaces.

† Emission factors for vehicle travel over unpaved surfaces are based on Equation 1a from Section 13.2.1 of AP-42. Calculations used a road surface silt loading of 2.4 g/m² (selected from AP-42 Table 13.2.1-2) and empirical constant elected from AP-42 Table 13.2.1-1.

‡ The empirical constant of 0.0022 lb/VMT for PM₁₀ was used to estimate dust emission factors presented. PM_{2.5} dust emissions were estimated by scaling the PM₁₀ emission factor using the PM_{2.5} empirical constant of 0.00054 lb/VMT compared to the PM₁₀ empirical constant (a scaling ratio of 0.25).

§ Emission rates were calculated assuming a vehicle round trip distance of 180 feet.

¶ Emission rates were calculated assuming a vehicle round trip distance of 100 feet.

Reader Note: Tables D-4, D-5, and D-6 and the associated text are new to the FEIS, added in response to "EPA_004," Comment #22. Appendix C3 contains the comments received on the DEIS and responses to those comments.

Table 22-1

Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Land Use, Land Planning, and Property	<p>Contain construction staging and construction activities within the Project Site and adjacent roadways.</p> <p>Coordinate with LIRR on the relocation of LIRR maintenance and operations facilities on the Project Site as they would be relocated during construction. The facilities would be housed in temporary facilities under the Construction Agreement between the Project Sponsor and LIRR.</p> <p>Coordinate with MTA and LIRR to provide interim facilities to enable the Yard to be functional during construction.</p>
Transportation	<p>The Project Sponsor would develop MPT plans for submission to NYCDOT for review and approval. Review of the plans and implementation of the best practices highlighted in the MPT would be coordinated with NYCDOT's OCMC. After NYCDOT has approved the MPT plans, the Project Sponsor and its contractors would be responsible for maintaining the provisions of the plans. Common MPT measures for a large-scale construction project in New York City would likely require:</p> <p>Temporary closure of curb lanes, and temporary closure, reduction in width, or relocation of sidewalks along segments of the streets and avenues bordering the Project Site.</p> <p>Based on the preliminary construction logistics plan developed by the Project Sponsor, construction trucks such as dump trucks or concrete trucks are anticipated to enter the "construction area" via West 33rd Street and Eleventh Avenue throughout the duration of Platform construction, and via West 30th Street for the construction of the substation.</p> <p>Pedestrian circulation adjacent to the Project Site would be temporarily closed throughout Platform construction on Eleventh Avenue and West 33rd Street. However, at no time would access to occupied buildings be closed, nor would access to the Western Rail Yard and other Caemmerer Rail Yard facilities be closed to LIRR personnel and equipment.</p> <p>No streets would be completely closed to vehicular traffic nor transit buses due to construction of the Preferred Alternative. However, the segment of West 33rd Street between Eleventh and Twelfth Avenues would be completely closed to non-emergency vehicles during the Preferred Alternative's construction period because of the NYCEDC West 33rd Street Viaduct project's construction.</p> <p>The timing of the West 33rd Street reconstruction work would be coordinated with the schedule and construction of the Platform.</p> <p>Nearby vehicle detour routes would include West 34th Street, West 30th Street, and West 29th Street and none of the streets are likely to be disrupted by the detour, nor would other nearby projects during the construction period.</p> <p>In areas where temporary sidewalk closure is required, the sidewalk would be relocated to the curb lane and a barrier could be erected to separate motor vehicle traffic from pedestrian traffic. Furthermore, 34th and 29th Streets would be available as alternative pedestrian routes to 33rd and 29th Streets, respectively.</p> <p>In areas where access to bordering lots is not needed—along segments of the streets and avenues bordering the Project Site—the sidewalk and/or curb lane may be closed. In such instances, pedestrians would be routed to the opposite side of the street at the nearest crosswalk.</p> <p>Sidewalk modification may include the construction of a protective shed over segments of sidewalk bordering construction sites. The width of any relocated or modified sidewalks would be at least five feet, as specified in the 2009 Restrictive Declaration.</p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Air Quality, Greenhouse Gas Emissions, and Resilience	<p>The Project Sponsor would implement measures to reduce both criteria pollutant and GHG emissions during construction in accordance with all applicable laws, regulations, and building codes. In addition, the Project Sponsor would implement an emissions reduction program to minimize the air quality effects from construction under the Preferred Alternative, consisting of the following components:</p> <ul style="list-style-type: none"> • Clean Fuel. Only ULSD fuel would be used for all diesel engines throughout the construction site. • Diesel Equipment Reduction. Electrically powered equipment such as welders and saws would be used instead of diesel-powered versions of that equipment, to the extent feasible and practicable. • Dust Control Measures. Contract specifications would require a dust control plan, including a watering program, to minimize dust emissions from construction activities. For example, all trucks hauling loose material would be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Project Site and water sprays would be used for all demolition, excavation, and transfer of soils to ensure that materials would be dampened as necessary to avoid the suspension of dust into the air. • Idling Restriction. As required by local law, all stationary vehicles on roadways adjacent to the Project Site would be prohibited from idling for more than three minutes. The idling restriction excludes vehicles that are using their engines to operate a loading, unloading, or processing device (e.g., concrete-mixing trucks) or otherwise required for the proper operation of the engine. • Engine Retrofits. Non-road diesel engines with a power rating of 50 horsepower (hp) or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the Preferred Alternative), including but not limited to, concrete mixing and pumping trucks would utilize the best available technology (BAT) (e.g., diesel particulate filters) for reducing diesel particulate matter emissions. • Utilization of Newer Equipment. USEPA's Tier 1 through 4 standards for non-road engines regulate the emission of criteria pollutants from new engines, including PM, CO, NOx, and hydrocarbons (HC). All diesel-powered non-road construction equipment with a power rating of 50 hp or greater would meet at least the Tier 3 emissions standard. <p>The Project Sponsor would also develop a stormwater management plan and identify measures to address risk from potential flooding due to precipitation.</p> <p>The Preferred Alternative would include a new ventilation system with several fan plants which would ventilate daily emissions and emergency smoke events from the Western Rail Yard to maintain air quality under operational conditions. The new ventilation system would be designed in compliance with all applicable laws, regulations, and building codes to ensure no adverse air quality effects from operation of these systems.</p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Noise and Vibration	<p>Noise from construction equipment would comply with New York City noise emission standards. These standards mandate that certain classifications of construction equipment and motor vehicles meet specified noise emission standards, and construction material be handled and transported in such a manner to not create unnecessary noise.</p> <p>Construction of the Preferred Alternative would include sufficient mitigation to meet the New York City Noise Control Code construction noise limit of an L_{max} of 85 dB(A) at the exteriors of any adjacent residential properties.</p> <p>The Project Sponsor would be required to obtain NYCDOB approval for construction outside of weekdays 7 AM to 6 PM, which is prohibited by the NYC Noise Control Code.</p> <p>To the extent practicable given space constraints at the work sites, construction would use acoustical noise tent and/or enclosures surrounding hoe rams, jackhammers, or pavement breakers that can provide up to 15 dB(A) of noise reduction during any demolition activities. For additional noise reduction, jackhammer noise mufflers that can provide up to an additional 10 dB(A) of noise reduction can also be used.</p> <p>To minimize the noise from the backup warning alarms on trucks, vehicles would be routed through the construction sites to minimize the use of alarms. In addition, vehicles would also be equipped with Occupational Safety and Health Administration (OSHA)-approved quieter backup alarms.</p> <p>Any blasting activities associated with excavation of rock during construction of the Tunnel Encasement would be coordinated and conducted with permission from the FDNY. The Project Sponsor would provide a blasting schedule to neighboring building owners and occupants. Construction vibration monitoring would be required during blasting activities to ensure that vibration does not exceed a level that could result in damage to any nearby buildings or structures.</p> <p>Consistent with the protection and monitoring procedures developed for the High Line, construction vibration monitoring would be required whenever construction would occur within 90 feet of the High Line structure to ensure that construction activities do not result in vibration levels that would be capable of causing damage.</p> <p>The Project Sponsor would develop a CPP for the construction of the Platform and Tunnel Encasement in order to protect the NRT and High Line. The CPP would be required to meet the guidelines set forth in the NYCDOB <i>TPPN #10/88, the Protection for Landmarked Buildings</i> guidance document of the LPC, and the National Park Service's <i>Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction</i>.</p> <p>The Project Sponsor would incorporate sufficient noise control measures in the final design of the ventilation system plans to ensure operation of the Preferred Alternative would be in compliance with the NYCNCC noise limits at all surrounding residential receptors.</p>
Cultural Resources	<p>The Project Sponsor would be required by SHPO to develop a CPP for protection of the NRT and High Line during the construction of the Preferred Alternative. The CPP for the protection of the High Line and NRT would be incorporated into the overarching CEPP that would be developed for the Preferred Alternative (see Section 22.3). The CPP would be required to meet the guidelines set forth in the NYCDOB <i>TPPN #10/88, the Protection for Landmarked Buildings</i> guidance document of the LPC, and the National Park Service's <i>Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction</i>. The CPP(s) would set forth the specific protection and monitoring measures that would be implemented during construction to avoid inadvertent damage to these historic properties and would be implemented in coordination with NYSHPO and NYCLPC.</p> <p>The LOR requires continued consultation under Section 14.09 regarding aspects of the development's design that could affect the High Line (specifically, review of preliminary and pre-final design plans). As part of the Federal consultation process, SHPO would require the Project Sponsor to meet all requirements set forth in the SEQRA process including compliance with the LOR.</p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Parks and Recreation Areas	<p>To ensure that potential construction-related effects to the High Line are not adverse, FRA would include conditions as part of its environmental decision regarding the Preferred Alternative, i.e., in the ROD for the EIS in accordance with NEPA. These conditions include requiring the Project Sponsor to develop a CEPP for the construction of the Platform and Tunnel Encasement in order to protect the High Line. FRA is coordinating with NYC Parks to determine appropriate minimization measures to address impacts to the High Line. Design plans for the Platform would be submitted at the preliminary and pre-final design stages. If NYC Parks identifies substantive concerns with maintenance and operation access, the Project Sponsor would continue coordination with NYC Parks to mitigate those concerns. The practices that would be used to reduce noise and vibration levels associated with construction of the Preferred Alternative, to the extent feasible and practicable, are detailed above.</p> <p>FRA would include conditions as part of its environmental decision regarding the Preferred Alternative, i.e., in the ROD for the EIS in accordance with NEPA, to ensure that the potential effects to the High Line from construction vibration are not adverse. These conditions include requiring the Project Sponsor to develop a CPP for the construction of the Platform and Tunnel Encasement in order to protect the High Line. The CPP would be required to meet the guidelines set forth in the NYCDOB <i>TPPN #10/88, the Protection for Landmarked Buildings</i> guidance document of the LPC, and the National Park Service's <i>Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction</i>.</p> <p>The Project Sponsor would consult with NYC Parks regarding those aspects of the Platform design that relate to the High Line. Design plans for the Platform would be submitted at the preliminary and pre-final design stages. If NYC Parks identifies substantive concerns with maintenance and operation access, the Project Sponsor would continue coordination with NYC Parks to mitigate those concerns.</p> <p><u>The Project Sponsor would consult with NYC Parks regarding aspects of the Platform design that relate to the High Line. The Project Sponsor would coordinate with NYC Parks on the design plans for the Platform at the preliminary and pre-final design stages. If NYC Parks identifies substantive concerns with maintenance and operation access, the Project Sponsor would continue to coordinate with NYC Parks to mitigate those concerns.</u></p> <p><u>The Project Sponsor would adhere to the terms of the Amended, Modified, and Restated High Line Easement Agreement among WRY Tenant LLC, the City of New York, the Metropolitan Transportation Authority, and the Long Island Rail Road Company (see FEIS Attachment 1, Appendix F4), which provides for, but is not limited to the following:</u></p> <ul style="list-style-type: none"> • Perpetual easements over the Western Rail Yard for the High Line structure, including “any alterations, replacements, substitutions and renewals thereof” and for structural supporting elements. • Reciprocal easements as between the City of New York and the owners of the Western Rail Yard parcels to enter the Western Rail Yard parcels and the High Line easement area, respectively. The access easement benefiting the City of New York provides explicitly for access for City personnel “to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements” to the High Line and related support facilities. • The City's review of any work that involves the Western Rail Yard developer's exercise of its rights under the Easement Agreement (e.g., construction of the Platform that affects the High Line). • The Western Rail Yard developer's responsibility for the restoration of any High Line structures damaged in the course of the developer's exercise of its rights under the Easement Agreement; and • Construction-period coordination between the City and the Western Rail Yard developer to ensure that the Western Rail Yard mixed-use development (which included the Platform that is the subject of the current DEIS) and the restoration and use of the High Line as a park proceed in a timely and safe manner. <p><u>In addition, the High Line Easement Agreement includes a perpetual easement that would apply to Amtrak's ownership rights of the Tunnel Encasement. The Tunnel Encasement would be 15-20 feet below grade and Amtrak's use and operations of the tunnel will not affect the City's ability to inspect and maintain the High Line. Those activities would be governed by the terms of the attached High Line Easement Agreement (see Appendix O3).</u></p> <p><u>To address potential noise impacts during construction of the Preferred Alternative, the Project Sponsor would consult with NYC Parks and Friends of the High Line to determine the necessary steps to protect park users, such as providing signage alerting park users to the potential for increased noise levels of certain portions of the park where high noise levels are anticipated.</u></p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Aesthetics and Visual Quality	No avoidance, minimization, or mitigation measures are proposed.
Contaminated Materials	<p>A Subsurface (Phase II) Investigation would be conducted in areas of proposed disturbance to characterize subsurface conditions. Since an RD was assigned to the Project Site based on the 2009 SEQRA/CEQR FEIS, the Phase II must be conducted with NYCOER approval. The investigation may also include coordination with NYSDEC, as a portion of the Project Site is listed in the SHWS due to coal tar contamination noted in prior investigations and/or coordination with USEPA.</p> <p>Prior to any excavation or construction activity, a site-specific RAP and CHASP would be prepared and incorporated into the Preferred Alternative's construction documents. The RAP and CHASP would describe precautionary measures and safety procedures to be followed to minimize pathways of exposure to contaminants, including a Materials Handling Plan identifying specific protocols and procedures to be employed to manage soil and groundwater at the Project Site in accordance with applicable regulations during construction. The requirement for a CHASP was also included in the RD that pertains to the Project Site.</p> <p>Information in the NY Spills database indicated that additional remedial activities would be required to address known or potential residual contamination on the southwestern portion of the Project Site related to Spill #1802063 and on the northwestern portion of the Project Site under the NYSDEC SHWS program (ID #231083). Remedial activities in these areas would continue to be conducted in coordination with NYSDEC and NYCOER, as required.</p> <p>Any USTs encountered during redevelopment would be properly closed and removed, along with any contaminated soil, in accordance with federal, state, and local regulations, including NYSDEC for registration and, if applicable, spill reporting.</p> <p>During any future subsurface disturbance, excavated soil would be handled and disposed of properly in accordance with all applicable regulatory requirements, with spill reporting as required. Transportation of material leaving the Project Site for off-site disposal would be in accordance with federal, state, and local requirements covering licensing of haulers and trucks, placarding, truck routes, manifesting, etc.</p> <p>The appropriate vapor mitigation systems would be installed to protect buildings on the terra firma portion of the Project Site. If required, the design of new buildings would consider soil vapor mitigation measures to prevent any volatile contaminants that may remain present in the soil and groundwater from migrating into the new buildings. The RD includes these vapor mitigation requirements. This document specifies that, based upon further testing and review of any additional analytical data, the Project Sponsor would have the opportunity to demonstrate to the satisfaction of the NYCDEP and the NYCOER which of these measures are required.</p> <p>Any building materials, equipment, or utilities containing suspect PCBs, LBP, and/or ACM would be properly handled and disposed of, in accordance with the applicable regulations, prior to demolition or construction which may disturb them. LBP and ACM Management Plans would be implemented for existing structures and utilities prior to disturbance.</p> <p>Dewatering activities would be conducted in accordance with NYCDEP requirements, including pre-treatment as required during construction.</p> <p>Appropriate permanent ventilation systems would be installed during construction of the Preferred Alternative, as necessary, (to be operated post-construction) for areas under the Platform at the Project Site in accordance with LIRR's engineering design criteria for yard ventilation.</p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Utilities and Energy	<p>During construction of the Platform, the Project Sponsor would be required to reroute and/or reconstruct portions of the Western Rail Yard's existing utility infrastructure on the Project Site and would make temporary infrastructure improvements to maintain utility services at the railyard. This would include temporary and permanent on-site sewer improvements. The existing storm sewers on the Project Site would be diverted to the sanitary sewer system to accommodate the Platform support piles, and temporary drainage provision (such as pits and pumps) would be installed as temporary bypasses if needed during construction to maintain stormwater drainage in the rail yard. The existing sanitary sewer system and potable water mains would be relocated in order to avoid conflicts with the Platform support piles; however, sanitary service and water supply to the rail yard would continue to function during and after construction. In addition, the AC duct banks that service the rail yard's lighting would be removed or abandoned during construction of Platform foundations, and the Project Sponsor would provide temporary power and lighting system provided to maintain lighting on the rail yard during construction. The Project Sponsor would reroute the DC feeders that supply energy to the rail yard's traction power system around foundations in compliance with LIRR practices and standards as needed to avoid conflicts with the Platform support piles.</p> <p>The storm sewer currently serving the rail yard would continue to operate following construction of the Platform in order to convey stormwater collected on the terra firma portion of the Project Site; this sewer operates in accordance with an MS4 permit and would continue to meet the permit requirements (no additional detention and/or onsite treatment measures are required). The drainage system in the railyard and on the Platform would discharge to the NYCDEP sewers adjacent to the Project Site and would be designed to meet all NYCDEP permit requirements.</p>
Soils and Geology	<p>FUGITIVE DUST CONTROL PLAN</p> <ul style="list-style-type: none"> • The Project Sponsor would develop a fugitive dust control plan. These measures would include, at a minimum, the following provisions: • Controlling fugitive dust through water spraying or use of a biodegradable dust suppressant solution; • Maintaining large piles of soil, rock or sediment in a wet condition, coated with a dust suppressant and/or covered to prevent wind erosion and fugitive dust and covering longer-term stockpiles with weighted tarps. • Performing concrete- and rock-grinding, drilling, and saw-cutting operations with a wet blade or using mist if the activity is generating significant dust. Such operations in an enclosed space would utilize vacuum collection or extraction fans. • Stabilizing or wetting loose material during loading and unloading if the activity is generating dust plumes, and covering this material during transportation to and from the Project Site. <p>DEWATERING PLAN</p> <p>The dewatering plan would require pumping of dewatering water into sedimentation tanks for removal of sediments prior to reuse on the sites or discharge into the City's sewer system or the Hudson River via the existing LIRR outfall that serves the rail yard. The Project Sponsor would periodically test water and particles in such tanks for pH and contaminants. Depending on test results, the Project Sponsor would treat the water for contaminants prior to disposal, as per NYSDEC, or NYCDEP regulations, and depending on point of discharge (i.e., City sewers or stormwater conveyance pipe to the Hudson River).</p>

Table 22-1 (cont'd)

Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Soils and Geology (cont'd)	<p>NOISE MITIGATION PLAN Construction practices that would be used to the extent feasible and practicable to reduce noise and vibration levels associated with construction of the Preferred Alternative are listed above under the Noise and Vibration environmental category.</p> <p>LIRR/MTA COORDINATION The Project Sponsor would conduct construction work in accordance with LIRR guidelines and design/construction criteria, which require persons engaged in pre-construction or construction activities located on or near the tracks, or with the potential of fouling a track in the Western Rail Yard to attend the LIRR Contractor Roadway Worker and Safety Training in accordance with provisions of 48 CFR Part 214 and LIRR Rules and Regulations. LIRR regulations also require that MTA and LIRR receive and approve plans—to result in a construction agreement entered into between MTA and LIRR and the Project Sponsor—for construction activities related to work at the Western Rail Yard.</p> <p>UTILITY PROTECTION The Project Sponsor has undertaken an inventory of underground utilities on the Project Site through a review of existing utility drawings and information, as well as performing geotechnical surveys. The Project Sponsor performed this work as part of the engineering and design of the Preferred Alternative. The Project Sponsor's contractor would confirm location of underground utility lines to ensure avoidance by digging test pits at each caisson location. The Project Sponsor's contractor would likely conduct additional geotechnical surveys if necessary. The Project Sponsor or Contractor may conduct additional soil and groundwater testing to characterize more fully soil constituents for disposal purposes.</p>
Water and Natural Resources	<p>GROUNDWATER To avoid exposing construction workers and the general public to existing groundwater contaminants and to minimize potential adverse impacts to groundwater resources, the Project Sponsor would perform demolition, disposal, excavation, dewatering, and other construction activities in accordance with all applicable federal, state, and local regulations and guidelines. As such, the Project Sponsor would implement a site-specific CHASP during ground disturbance to protect workers, the public, and the environment from exposure to groundwater contaminants.</p> <p>WETLANDS To minimize potential adverse impacts to NYSDEC littoral zone tidal wetlands of the Hudson River due to discharge of sediment during construction, the Project Sponsor would implement the erosion and sediment control measures contained in the SWPPP prepared for the Project.</p> <p>AQUATIC RESOURCES To minimize potential adverse impacts to water quality and aquatic biota of the Hudson River during construction, the Project Sponsor would treat all groundwater recovered during dewatering in accordance with NYCDEP requirements prior to discharge to the municipal sewer. Additionally, to minimize the potential for discharge of sediment to the Hudson River during construction, the Project Sponsor would implement erosion and sediment control measures contained in the SWPPP prepared for the Project in accordance with SPDES requirements.</p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Coastal Zone Consistency	<p>The Project Sponsor would implement erosion and sediment control measures identified in the SWPPP prepared in accordance with a SPDES permit for the Preferred Alternative.</p> <p>The Project Sponsor would pump, test, and treat any groundwater recovered during dewatering of excavation sites before disposal to the New York City stormwater or combined sewer system under an NYCDEP Discharge Permit from the Bureau of Wastewater Treatment and in conformance with applicable discharge limits.</p> <p>The Project Sponsor would treat any groundwater recovered during dewatering activities prior to discharge to the Hudson River through existing stormwater outfalls within the Western Rail Yard in accordance with NYSDEC requirements.</p> <p>The Project Sponsor would implement the following remedial and protective measures to avoid, minimize, or mitigate exposure pathways to these potential contaminants during construction and operation:</p> <ul style="list-style-type: none"> • A Phase II Investigation would be conducted in areas of proposed disturbance (above the bedrock interface) to characterize subsurface conditions. • Prior to any excavation or construction activity, the Project Sponsor would prepare a site-specific RAP and CHASP. • Remedial activities in areas of known spills would continue to be conducted in coordination with NYSDEC and OER, as required. • Any USTs encountered during redevelopment would be properly closed and removed, along with any contaminated soil, in accordance with federal, state, and local regulations, including NYSDEC for registration and, if applicable, spill reporting. • During subsurface disturbance, excavated soil would be handled and disposed of properly in accordance with all applicable regulatory requirements, with spill reporting as required. Transportation of material for off-site disposal would be in accordance with federal, state, and local requirements covering licensing of haulers and trucks, placarding, truck routes, manifesting, etc. • The appropriate vapor mitigation systems would be installed to protect buildings on the terra firma portion of the Project Site. If required, the design of new buildings would consider soil vapor mitigation measures to prevent any volatile contaminants that may remain present in the soil and groundwater from migrating into the new buildings. • Any building materials, equipment, or utilities containing suspect PCBs, LBP, and/or ACM would be properly handled and disposed of, in accordance with the applicable regulations, prior to demolition or construction which may disturb them. • Appropriate permanent ventilation systems would be installed during redevelopment (to be operated post-construction) for areas under the platform at the Project Site in accordance with LIRR's engineering design criteria for yard ventilation. <p>FRA would include conditions as part of its environmental decision regarding the Preferred Alternative, i.e., in the ROD for the EIS in accordance with NEPA, and in any funding agreement between the USDOT and the Project Sponsor, requiring the Project Sponsor to develop a CPP for the construction of the Platform and Tunnel Encasement in order to protect the NRT and High Line. The CPP would be required to meet the guidelines set forth in the NYCDOB <i>TPPN #10/88</i>, the <i>Protection for Landmarked Buildings</i> guidance document of the LPC, and the National Park Service's <i>Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction</i>.</p>
Socioeconomics	<p>The Project Sponsor has committed to provide interim MTA LIRR facilities to enable the railyard to be fully functional during construction.</p> <p>The Project Sponsor would develop MPT plans to ensure the safety of pedestrian, bicyclist, and vehicle circulation near the Project Site during construction of the Preferred Alternative as required by NYCDOT.</p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Public Health	<p>The Project Sponsor would install appropriate permanent ventilation systems during construction of the Preferred Alternative (to be operated post-construction) for areas under the Platform at the Project Site, in accordance with LIRR's engineering design criteria for yard ventilation.</p> <p>Prior to any excavation or construction activity, a site-specific RAP and CHASP would be prepared.</p> <p>During any subsurface disturbance, the Project Sponsor would handle and dispose of excavated soil properly in accordance with all applicable regulatory requirements, with spill reporting as required.</p> <p>The Project Sponsor would treat any groundwater recovered during dewatering in accordance with NYCDEP requirements prior to discharge to the municipal sewer.</p> <p>The Project Sponsor would transport all material leaving the Site for off-site disposal in accordance with federal, state, and local requirements covering licensing of haulers and trucks, placarding, truck routes, manifesting, etc.</p> <p>The Project Sponsor would incorporate sufficient noise control measures in the final design of the ventilation system plans to ensure compliance with the NYCNCC at all surrounding residential receptors.</p> <p>Construction of the Preferred Alternative would include sufficient mitigation to meet the New York City Noise Control Code construction noise limit of an Lmax of 85 dB(A) at the exteriors of any adjacent residential properties.</p>
Environmental Justice	<p>With respect to potential vibration and other construction-related impacts to the High Line, the Project Sponsor would develop a CPP to protect this resource during construction of the Platform and Tunnel Encasement. The CPP would include vibration monitoring whenever construction would occur within 90 feet of the High Line structure to ensure that construction activities do not result in vibration levels that would be capable of causing damage.</p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

Environmental Category	Operational and Construction Effects
Section 4(f)	<p>FRA would require the Project Sponsor to develop a CPP for the construction of the Platform and Tunnel Encasement in order to protect the High Line and the NRT. As described in Section 22.3, the CPP for the protection of the High Line and NRT is a component of the overarching CEPP that would be developed for the Preferred Alternative.</p> <p>FRA is consulted with NYC Parks to determine the appropriate steps to protect High Line park users and the agency's ability to maintain the High Line (see Appendix O3). The Project Sponsor would consult with NYC Parks regarding those aspects of the Platform design that relate to the High Line. Design plans for the Platform would be submitted at the preliminary and pre-final design stages. If NYC Parks identifies substantive concerns with maintenance and operations access, the Project Sponsor would continue coordination with NYC Parks to mitigate those concerns. The Project Sponsor would consult with NYC Parks regarding aspects of the Platform design that relate to the High Line. The Project Sponsor would coordinate with NYC Parks on the design plans for the Platform at the preliminary and pre-final design stages. If NYC Parks identifies substantive concerns with maintenance and operation access, the Project Sponsor would continue to coordinate with NYC Parks to mitigate those concerns.</p> <p><u>The Project Sponsor would adhere to the terms of the Amended, Modified, and Restated High Line Easement Agreement among WRY Tenant LLC, the City of New York, the Metropolitan Transportation Authority, and the Long Island Rail Road Company, (see FEIS Attachment 1, Appendix F4), which provides for, but is not limited to the following:</u></p> <ul style="list-style-type: none"> • Perpetual easements over the Western Rail Yard for the High Line structure, including “any alterations, replacements, substitutions and renewals thereof” and for structural supporting elements. • Reciprocal easements as between the City of New York and the owners of the Western Rail Yard parcels to enter the Western Rail Yard parcels and the High Line easement area, respectively. The access easement benefiting the City of New York provides explicitly for access for City personnel “to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements” to the High Line and related support facilities. • The City's review of any work that involves the Western Rail Yard developer's exercise of its rights under the Easement Agreement (e.g., construction of the Platform that affects the High Line). • The Western Rail Yard developer's responsibility for the restoration of any High Line structures damaged in the course of the developer's exercise of its rights under the Easement Agreement; and • Construction-period coordination between the City and the Western Rail Yard developer to ensure that the Western Rail Yard mixed-use development (which included the Platform that is the subject of the current DEIS) and the restoration and use of the High Line as a park proceed in a timely and safe manner. <p><u>The High Line Easement Agreement includes a perpetual easement that would apply to Amtrak's ownership rights of the Tunnel Encasement. The Tunnel Encasement would be 15-20 feet below grade and Amtrak's use and operations of the tunnel would not affect the City's ability to inspect and maintain the High Line. Those activities would be governed by the terms of the High Line Easement Agreement (Appendix F4).</u></p> <p><u>To address potential noise impacts during construction of the Preferred Alternative, the Project Sponsor would consult with NYC Parks and Friends of the High Line to determine the necessary steps to protect park users, such as providing signage alerting park users to the potential for increased noise levels of certain portions of the park where high noise levels are anticipated.</u></p>

Table 22-1 (cont'd)
Summary of Mitigation Measures and Project Commitments

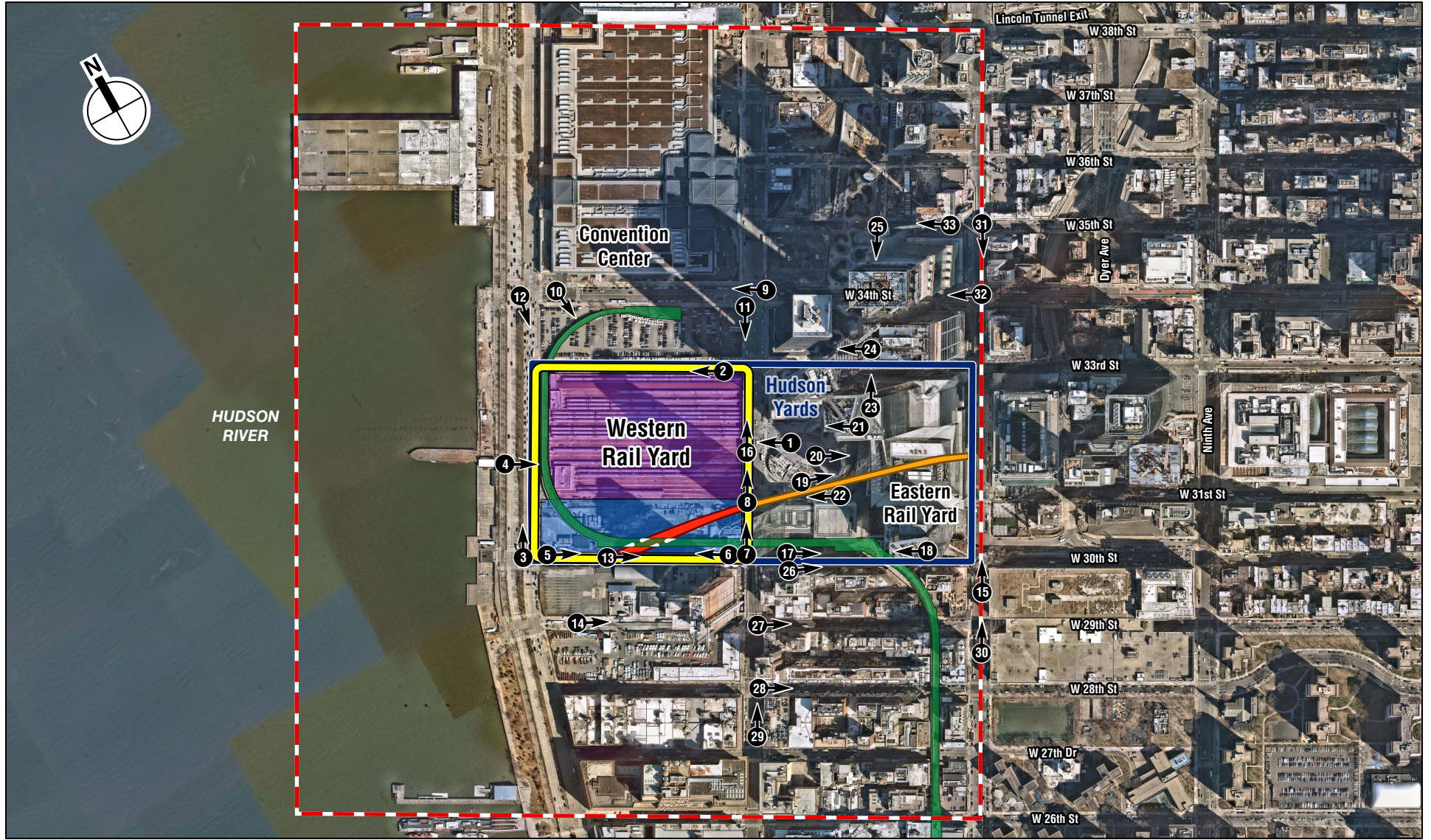
Environmental Category	Operational and Construction Effects
Section 4(f)	<p>The following practices would be used to the extent feasible and practicable to reduce noise and vibration levels associated with construction of the Preferred Alternative:</p> <ul style="list-style-type: none"> • Noise from construction equipment would comply with New York City noise emission standards. These standards mandate that certain classifications of construction equipment and motor vehicles meet specified noise emission standards, and construction material be handled and transported in such a manner to not create unnecessary noise. • Construction of the Preferred Alternative would include sufficient mitigation to meet the NYCNCC construction noise limit of an L_{max} of 85 dB(A) at the exteriors of any adjacent residential properties. • The Project Sponsor would be required to obtain NYCDOB approval for construction outside of weekdays 7 AM to 6 PM, which is prohibited by the NYCNCC. The Project Sponsor expects discretionary approval would be granted to reduce interference with LIRR operations. • To the extent practicable given space constraints at the work sites, construction would use acoustical noise tent and/or enclosures surrounding hoe rams, jackhammers, or pavement breakers that can provide up to 15 dB(A) of noise reduction during any demolition activities. For additional noise reduction, jackhammer noise mufflers that can provide up to an additional 10 dB(A) of noise reduction can also be used. • To minimize the noise from the backup warning alarms on trucks, vehicles would be routed through the construction sites to minimize the use of alarms. In addition, vehicles would also be equipped with OSHA-approved quieter backup alarms. • Any blasting activities associated with excavation of rock during Tunnel Encasement would be coordinated and conducted with permission from the FDNY. The Project Sponsor would provide a blasting schedule to neighboring building owners and occupants. Construction vibration monitoring would be required during blasting activities to ensure that vibration does not exceed a level that could result in damage to any nearby buildings or structures. • Consistent with the protection and monitoring procedures developed for the High Line, construction vibration monitoring would be required whenever construction would occur within 90 feet of the High Line structure to ensure that construction activities do not result in vibration levels that would be capable of causing damage. <p>The Project Sponsor has committed to include a specification in construction documents indicating the following: the only allowable construction work hours on the High Line structure and columns for underpinning work (column load transfer) are between 11 PM and 7 AM—when the High Line is not open—unless otherwise approved by NYC Parks and Friends of the High Line.</p>

Reader Note: This table has been modified from what was in the DEIS in response to comments from “USDOI_003,” Comment #53, and updates to mitigation measures for Parks and Recreation Areas and Section 4(f) Evaluation, identified during consultation with NYC Parks. Changes are shown as double-underlined text. Appendix C3 contains the comments received on the DEIS and responses to those comments.

Attachment 1

Revised DEIS Figures





- | | | | |
|--|----------------------------------|--|---|
| | Project Site (Western Rail Yard) | | Proposed Platform |
| | Hudson Yards | | Existing Concrete Encasement |
| | Approximate Terra Firma Area | | Proposed Tunnel Encasement |
| | Area of Visual Effect | | Existing High Line Park (Remains Unaltered) |

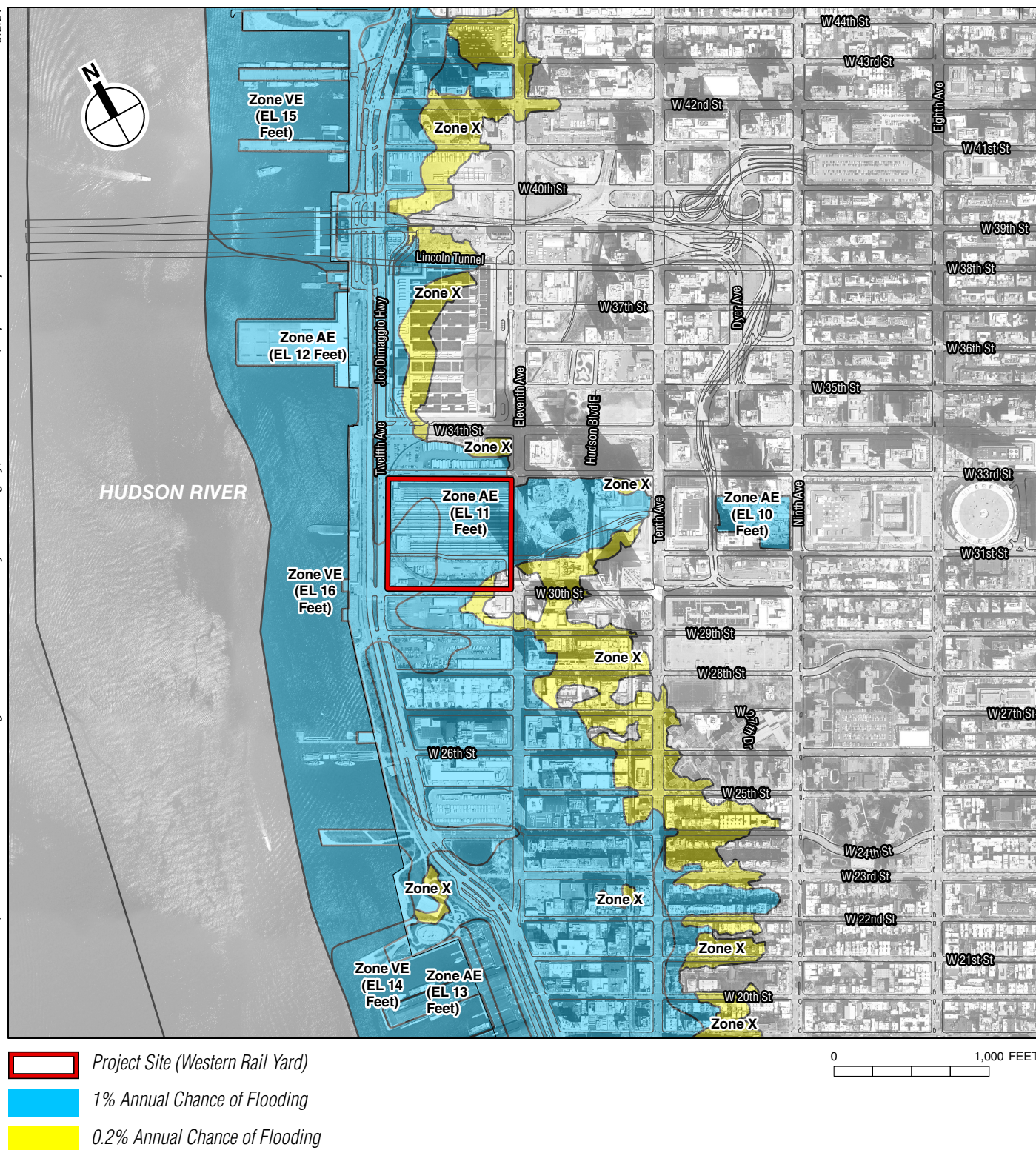


Photograph View Direction and Reference Number

* Photographs appear in Appendix H.

0 400 FEET

Aesthetics and Visual Quality
Project Location and Area of Visual Effect



FEMA Preliminary FIRM
Figure 15-1

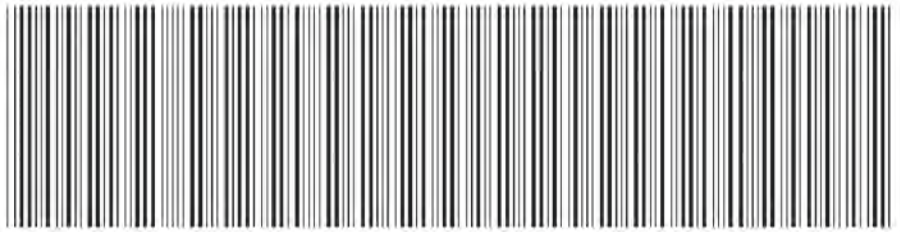


Attachment 1

Appendix F4

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2013041500721008002E6F5A

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 86

Document ID: 2013041500721008

Document Date: 04-10-2013

Preparation Date: 06-14-2013

Document Type: EASEMENT

Document Page Count: 84

PRESENTER:

ROYAL ABSTRACT OF NEW YORK
LLC(PICK-UP/RANDY)
500 5TH AVENUE
SUITE 1540
NEW YORK, NY 10110
902214-215

RETURN TO:

ROYAL ABSTRACT OF NEW YORK
LLC(PICK-UP/RANDY)
500 5TH AVENUE
SUITE 1540
NEW YORK, NY 10110
902214-215

Borough	Block	Lot	Unit	Address
MANHATTAN	702	10	Entire Lot	1 NA WEST 30TH STREET

Property Type: OTHER Easement

Borough	Block	Lot	Unit	Address
MANHATTAN	676	3	Entire Lot	N/A WEST 30TH STREET

Property Type: OTHER Easement

☒ Additional Properties on Continuation Page

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

GRANTOR/SELLER:

METROPOLITAN TRANSPORTATION AUTHORITY
347 MADISON AVENUE
NEW YORK, NY 10017

GRANTEE/BUYER:

CITY OF NEW YORK
CITY HALL
NEW YORK, NY 10007

☒ Additional Parties Listed on Continuation Page

FEES AND TAXES

Mortgage :

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 462.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE**

CITY OF NEW YORK

Recorded/Filed 07-12-2013 15:22

City Register File No.(CRFN):

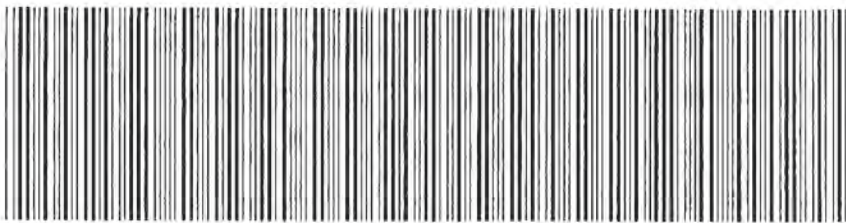
2013000276097



Annette M. Hill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2013041500721008002C6DDA

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 86

Document ID: 2013041500721008

Document Date: 04-10-2013

Preparation Date: 06-14-2013

Document Type: EASEMENT

PROPERTY DATA

Borough	Block	Lot	Unit	Address
MANHATTAN	702	4	Entire Lot	NA
				553 WEST 30TH STREET
Property Type: OTHER Easement				

PARTIES

GRANTOR/SELLER:

LONG ISLAND RAIL ROAD COMPANY
347 MADISON AVENUE
NEW YORK, NY 10017

GRANTOR/SELLER:

LEGACY YARDS TENANT LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023

GRANTOR/SELLER:

ERY TENANT LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023

GRANTOR/SELLER:

WRY TENANT LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023

(8)

AMENDED, MODIFIED, AND RESTATED HIGH LINE EASEMENT AGREEMENT

AMENDED, MODIFIED, AND RESTATED HIGH LINE EASEMENT AGREEMENT made this 10 day of April, 2013 (this "Agreement"), among METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York ("MTA"), LONG ISLAND RAIL ROAD COMPANY, each having its principal place of business at 347 Madison Avenue, New York, New York 10017, and THE CITY OF NEW YORK a municipal corporation formed pursuant to the laws of the State of New York, having its principal office at City Hall, New York, NY 10007 (the "City" or the "Easement Holder").

WITNESSETH:

MTA is the owner of two certain parcels of land in the City of New York, State of New York known as the John D. Caemmerer West Side Yard, located (i) between West 30th and 33rd Streets and between 10th and 11th Avenues and more particularly described in Exhibit A-1 attached hereto (the "Eastern Rail Yard" or "ERY") and (ii) between West 30th and 33rd Streets and between 11th and 12th Avenues and more particularly described in Exhibit A-2 attached hereto (the "Western Rail Yard" or "WRY"; the ERY and WRY are collectively referred to as the "WSY").

MTA has, by a Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) dated May 26, 2010 and recorded in the Office of the City Register, City of New York at CRFN 2010000194078 (the "ERY Declaration of Easements"), subdivided its fee interest in the ERY into two (2) separate and distinct fee parcels located above and below a horizontal limiting plane described in the ERY Declaration of Easements, and known as (i) the "ERY Yards Parcel", as more particularly described in Exhibits A-3 attached hereto (the owner of the ERY Yards Parcel from time to time, the "ERY Yards Parcel Owner"), and (ii) the "ERY Facility Airspace Parcel", as more particularly described in Exhibit A-4 attached hereto, (the owner(s) of the ERY Facility Airspace Parcel, from time to time, the "ERY Facility Airspace Parcel Owner", and collectively with the ERY Yards Parcel Owner, "ERY Parcel Owners").

MTA has, by a Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated May 26, 2010 and recorded in the Office of the City Register, City of New York at CRFN 2010000194077 (the "WRY Declaration of Easements"), subdivided its fee interest in the WRY into two (2) separate and distinct fee parcels located above and below a horizontal limiting plane described in the WRY Declaration of Easements, and known as (i) the "WRY Yards Parcel", as more particularly described in Exhibits A-5 attached hereto (the owner of the WRY Yards Parcel from time to time, the "WRY Yards Parcel Owner"), and (ii) the "WRY Facility Airspace Parcel", as more particularly described in Exhibit A-6 attached hereto (the owner(s) of the WRY Facility Airspace Parcel, from time to time, the "WRY Facility Airspace Parcel Owner", and collectively with the WRY Yards Parcel Owner, "WRY Parcel Owners"). (The ERY Yards Parcel and the WRY Yards Parcel are referred to collectively herein as the "Yards Parcels"). The ERY Yards Parcel Owner and the WRY

Yards Parcel Owner are referred to collectively herein as the "Yards Parcel Owners". The ERY Facility Airspace Parcel and the WRY Facility Airspace Parcel are referred to collectively herein as the "Facility Airspace Parcels". The ERY Facility Airspace Parcel Owner and the WRY Facility Airspace Parcel Owner are referred to collectively herein as the "Facility Airspace Parcel Owners". The Yards Parcel Owners and the Facility Airspace Parcel Owners (including each individual Severed Parcel Owner (as hereinafter defined)) are referred to, collectively, as the "Parcel Owners" and each individually as a "Parcel Owner".)

MTA, Long Island Rail Road Company ("LIRR") and ERY Tenant LLC (f/k/a RG ERY LLC) entered into an Agreement of Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) (the "ERY Balance Lease"), dated as of the date hereof, a memorandum of which is to be recorded in the Office of the City Register, New York County, pursuant to which MTA has leased to ERY Tenant LLC (together with its respective successors and assigns, the "ERY Tenant") the ERY Facility Airspace Parcel, upon the terms and conditions set forth in the ERY Balance Lease and the documents executed or contemplated to be executed in connection therewith.

MTA, LIRR and Legacy Yards Tenant LLC ("Tower C Tenant") entered into an Agreement of Severed Parcel Lease (the "Tower C Lease"), dated as of the date hereof, a memorandum of which is to be recorded in the Office of the City Register, New York County, pursuant to which MTA has leased to Tower C Tenant, those premises described on Exhibit A-7 attached hereto.

MTA, LIRR and WRY Tenant LLC (f/k/a RG WRY LLC) entered into an Agreement to Enter Into Lease ("WRY Agreement to Enter into Lease") dated as of May 26, 2010, a memorandum of which was recorded in the Office of the City Register, New York County at CRFN 2010000194079, pursuant to which MTA agreed to lease and to sell to WRY Tenant LLC (together with its respective successors and assigns, the "WRY Tenant") the WRY Facility Airspace Parcel, upon the terms and conditions set forth in the WRY Agreement to Enter into Lease and the documents executed or contemplated to be executed in connection therewith.

ERY Tenant, WRY Tenant and Tower C Tenant intend to construct, operate and maintain a mixed-use development in their respective Facility Airspace Parcels, including a roof and associated facilities over the Yards Parcel (the "LIRR Roof and Facilities"), and in connection therewith, will locate buildings, improvements, other temporary and permanent structures (collectively, the "Facility Airspace Improvements") and equipment above, below, and/or adjacent to the High Line Easement Area, and the Viaduct (including without limitation the Spur (as each are defined below)). ERY Tenant, WRY Tenant and Tower C Tenant further intend to further subdivide their respective Facility Airspace Parcels into several development parcels (each, including the premises leased pursuant to the Tower C Lease, a "Severed Parcel" and the Parcel Owner thereof, including Tower C Tenant, a "Severed Parcel Owner"). As used herein, the term "Parcel" shall mean, as the context requires, the Facility Airspace Parcels (including one or more Severed Parcels created therein) and/or the Yards Parcel.

The WSY is subject to an easement, the sources of which are more particularly described in Exhibit B attached hereto (the "Original High Line Easement"), within which is located an elevated railway viaduct with highway-railroad grade separation structures extending from the northern side of West 30th Street west of 10th Avenue to the point of intersection of the WSY with West 33rd Street (the "High Line Viaduct"), which forms a portion of that certain railway easement which begins at the corner of Gansevoort Street and Washington Street, New York, New York (such location being formerly identified as 75-95 Gansevoort Street) and runs northerly and westerly to near 547-55 West 34th Street and the West 34th Street streetbed, identified as Line Code 4225 in the records of the United States Railway Association (the "High Line"). Also located within the Original High Line Easement is a spur track viaduct with highway-railroad grade separation structures (the "Spur"), extending east from the High Line Viaduct and ending at the corner of 10th Avenue and West 30th Street (excluding that rail separation structure segment situated over 10th Avenue). The Spur and the High Line Viaduct (each of which are depicted in Exhibit C annexed hereto), inclusive of the tracks, trestles, bridges, wires, conduits, cables, rails, signals, drainage and other pipes, structures, instruments, appliances and other facilities existing within the High Line Viaduct and the Spur as may now or hereafter exist, are collectively referred to herein as the "Viaduct". Pursuant to and subject to the terms of the Original High Line Easement, the Easement Holder is permitted to use and operate the Viaduct to maintain railroad tracks, and equipment and utilities appurtenant thereto, including the Viaduct, and to have reasonable access over the WSY to exercise said easement. CSX Transportation Inc. ("CSXT"), the Easement Holder immediately prior to the City's acquisition of the Original High Line Easement, and its predecessors in interest, have conducted no rail service over the Viaduct since 1982.

Subject to this Agreement, the City desires to improve and redevelop the Viaduct, and to convert the use of the Viaduct to public space, public trail use or other public recreational purpose, as general municipal property within the limits of the Original High Line Easement, as amended, modified and restated by this Agreement, pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and 49 C.F.R. Section 1152.29 (collectively, the "Railbanking Legislation"), and pursuant to a Certificate of Interim Trail Use (as may be modified or superseded, the "CITU") dated June 13, 2005 and issued by the federal Surface Transportation Board to the City in accordance with the Railbanking Legislation.

The acquisition and site selection of the Original High Line Easement and Viaduct by the City has been approved pursuant to Section 197-c of the New York City Charter by resolution of the City Planning Commission ("CPC") dated June 9, 2010, Cal. No. 6 (C 100180 PCM), and by resolution of the New York City Council dated July 29, 2010 (No. 393).

In furtherance of the foregoing initiatives, (i) CSXT and the City entered into a Trail Use Agreement, dated November 4, 2005, as amended by that certain Amendment to Trail Use Agreement dated as of July 11, 2012 (collectively, as may be amended, the "TUA"), and (ii) prior to the execution of this Agreement, CSXT has contributed the High Line, the Spur and the Original High Line Easement to the City by

Quitclaim Deeds from CSXT to the City, and accordingly the City has become the sole Easement Holder for all purposes hereunder.

The parties intend that the conversion and redevelopment of the entirety of the Viaduct situated on the WRY Facility Airspace Parcel the "WRY High Line") shall, subject to this Agreement, constitute and be operated and maintained only in a manner which qualifies same as "publicly accessible open space" within the meaning of Section 93-75 of the Zoning Resolution of the City of New York (as amended from time to time, the "Zoning Resolution"). In addition, the parties intend that the conversion and redevelopment of the entirety of the Spur and High Line segment situated on the ERY Facility Airspace Parcel (the "ERY High Line") shall constitute a "public access area" and be operated and maintained in compliance with Section 93-71 of the Zoning Resolution.

The parties further acknowledge that the Zoning Resolution mandates the provision of certain public access points or connections (such mandated access points or connections are hereinafter referred to as "Public Connections") to the WRY High Line and ERY High Line, respectively, and in connection therewith certain modifications to the physical structure of the Viaduct will be required. Specifically, the Zoning Resolution requires the applicable Parcel Owner(s) and the Easement Holder (with respect to the development and maintenance of the WRY High Line) to: (a) with respect to the WRY, provide Public Connections to, and develop and maintain, the WRY High Line in accordance with (i) a restrictive declaration, to be executed and recorded by the applicable Parcel Owner(s) as contemplated under Section 93-06 of the Zoning Resolution (the "WRY Restrictive Declaration") and (ii) site and landscaping plans and a maintenance plan that shall be subject to the certification ("Certification") of the Chairperson of CPC (the "Chairperson") in accordance with Section 93-78 of the Zoning Resolution, which plans shall include, among other things, the locations, dimensions and other details of the Public Connections to the WRY High Line (collectively, the "WRY Site and Landscaping Plans"); and (b) with respect to the ERY High Line, provide Public Connections in accordance with Section 93-71 of the Zoning Resolution pursuant to plans that shall be subject to Certification of the Chairperson in accordance with Section 93-70 of the Zoning Resolution (collectively, the "ERY Site and Landscaping Plans" and together with the WRY Site and Landscaping Plans, the "Site and Landscaping Plans").

Subject to this Agreement, the Parcel Owners desire to support the initiatives of the City as Easement Holder to improve and redevelop the Viaduct, including the conversion of the High Line Viaduct and the Spur to and use thereof as public space, public trail use or other public recreational purpose within the limits of the High Line Easement Area (as hereinafter defined), such initiatives being consistent with the development plans of the Parcel Owners pursuant to the ERY Balance Lease, the Tower C Lease, the WRY Agreement to Enter into Lease and the documents executed or contemplated to be executed in connection therewith.

Parcel Owners and Easement Holder now wish to amend, modify and restate the Original High Line Easement in its entirety to permit implementation of such initiatives, for the benefit of both Parcel Owners and Easement Holder.

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Easement Holder and the Parcel Owners covenant and agree as follows:

1. **High Line Easement.** The Parcel Owners hereby amend, modify and restate the Original High Line Easement in its entirety, and grant to Easement Holder, subject to the reservations, exceptions and other terms of this Agreement, the following rights and easements across the Yards Parcels and the Facility Airspace Parcels, for the durations specified below (such rights and easements, the "High Line Easement"); provided, that if no duration is so specified for a particular easement, such easement shall run in perpetuity:

- (a) High Line Easement Area. A perpetual easement over the portions of the WSY in the locations, with the dimensions more particularly described and depicted in Exhibit C annexed hereto, and within a lower limiting plane commencing at an elevation equal to the bottom of the trestle of the High Line Viaduct and Spur on the date hereof (as such elevations vary across the WSY and are indicated in Exhibit C) and an upper limiting plane at an elevation of 61 feet Manhattan datum over the WRY and 63.4 feet Manhattan datum over the ERY (such elevations equal to 22.5 feet above the highest rail existing on the Viaduct, WRY and ERY, respectively, on the date hereof as depicted in Exhibit C annexed hereto), within which the High Line Viaduct and Spur, including any alterations, replacements, substitutions and renewals thereof in accordance with this Agreement, shall be located (the "High Line Easement Area"). Spot elevations indicating the elevations of the bottom of the trestle of the Viaduct and the top of rail on the Viaduct on the date hereof are depicted in Exhibit C annexed hereto. The parties agree that notwithstanding the description and depiction of the Viaduct and Viaduct Support Facilities on Exhibit C, the Viaduct and Viaduct Support Facilities shall be modified after the date of this Agreement as set forth in Exhibit F annexed hereto (i.e., to remove certain columns supporting and substitute certain structural support for the Viaduct and to add certain 'balcony' space to the Viaduct), and upon such modification, the Viaduct Support Facilities and the Viaduct and High Line Easement Area shall be deemed to be as altered according to Exhibit F. Upon request of either Parcel Owner or the Easement Holder, the parties shall execute and deliver in recordable form an instrument modifying the legal description of the High Line Easement Area, as aforesaid, and shall execute and deliver such other instruments as may be necessary for recording such easement modification. The party making the request shall prepare the easement modification and pay any and all recording charges, transfer taxes and other fees, if any, that may be payable in connection with such easement modification, it being agreed that the parties hereto will avail themselves of any exemption from such charges, taxes and fees as may then be available.

(b) Easement for Location of Viaduct Support Facilities. A perpetual easement over the portions of the WSY in which the footings, foundations, columns, column brackets, trusses, cross girders, supports, drainage pipes, conduit and other structural and appurtenant elements which provide structural and other support for the High Line Viaduct and Spur ("Viaduct Support Facilities") are currently located, to maintain the same, including any alterations, replacements, substitutions and renewals thereof in their current locations, and to attach additional drainage pipes (to connect to sewers and/or runoff into the street) and conduits to the Viaduct Support Facilities and to access utilities in locations approved by the applicable Parcel Owner in accordance with this Agreement (such approval not to be unreasonably withheld, delayed or conditioned) for so long as such facilities support and serve the High Line Viaduct and Spur (including any alterations, replacements, substitutions and renewals of the High Line Viaduct and Spur). The general locations of the columns comprising the Viaduct Support Facilities on the date hereof are depicted in Exhibit C annexed hereto, but shall be subject to modification as depicted in Exhibit F annexed hereto.

(c) Additional Easements and Reservations.

(i) Easement Holder Entry. A perpetual right and easement for the benefit of the Easement Holder to have its personnel enter in, upon and through the Yards Parcels and the Facility Airspace Parcels (i.e., outside the High Line Easement Area) in connection with and to the extent reasonably necessary or desirable (A) to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements to the Viaduct and Viaduct Support Facilities, (B) for the Easement Holder to comply with any legal requirements applicable to its respective property or (C) as otherwise required, permitted or contemplated pursuant to this Agreement (any such physical entry into the WSY, an "Easement Holder Entry" and any work undertaken through any Easement Holder Entry, including without limitation an inspection, "Easement Holder Work"). Any Easement Holder Entry shall be subject to the terms of this Agreement.

For the avoidance of doubt, neither (a) any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements to the Viaduct by Easement Holder in, on or over the WSY that (i) take place entirely within the High Line Easement Area, and (ii) do not involve any entrance onto or over any portion of the Facility Air Space Parcel or Yards Parcel (other than within the High Line Easement Area) nor (b) use of the High Line Viaduct or Spur for Public Space or Railroad Use shall constitute an Easement Holder Entry or a violation of this Agreement. Nothing in this Agreement shall provide any Parcel

Owner (with respect to the Yards Parcel Owner, in its proprietary capacity hereunder) with any right to review such use and enjoyment of the High Line Viaduct and Spur, except to the extent expressly provided herein with respect to "Interim Use" (hereinafter defined).

- (ii) Parcel Owners Entry. The High Line Easement shall be subject to the right of the Parcel Owners to have their personnel enter in, upon and through the High Line Easement Area in connection with and to the extent reasonably necessary or desirable (A) to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements necessary or desirable to be performed by the Parcel Owners with respect to the Yards Parcels and/or the Facility Airspace Parcels, (B) for each Parcel Owner to comply with any legal requirements applicable to its respective property, (C) to make Public Connections and other connections (if any) to the Viaduct pursuant to Section 1(c)(iii) of this Agreement, (D) to perform any "WRY High Line Elevation Alteration" (as hereinafter defined) pursuant to Section 1(c)(iv) of this Agreement, (E) to install any Facility Airspace Improvement Support Facilities pursuant to Section 1(c)(v) hereof, (F) to install Construction Protection pursuant to Section 1(c)(v) hereof, or (G) as otherwise required, permitted or contemplated pursuant to this Agreement (any such physical entry into the High Line Easement Area and/or modification, relocation or other work on the Viaduct or Viaduct Support Facilities, a "Parcel Owner Entry", and any such work undertaken through a Parcel Owner Entry, including without limitation an inspection, "Parcel Owner Work"). Any Parcel Owner Entry shall be subject to the terms of this Agreement.

For the avoidance of doubt, the parties understand and agree that: (1) no inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements to the WSY, access thereon, operation thereof or any other use or enjoyment of the WSY by the Parcel Owners and any of their contractors, invitees, lessees, licensees, occupants, agents, or designees (collectively, "WSY Occupants") that does not (I) constitute actual physical entry into the High Line Easement Area or (II) involve any alteration to the Viaduct or Viaduct Support Facilities, shall be deemed a Parcel Owner Entry, Parcel Owner Work or a violation of this Agreement; (2) in no event shall (x) any reduction in light and air within the High Line Easement Area caused by the construction and maintenance of improvements on the WSY outside of the High Line Easement Area or (y) any noise or vibrations emanating from the WSY, including without limitation, from construction work by a Parcel Owner or any aspects of rail

operations in the Yards Parcel, be deemed to be a Parcel Owner Entry or a violation of this Agreement; and (3) nothing in this Agreement shall (i) restrict the Parcel Owners from using and enjoying the portions of the WSY not within the High Line Easement Area in accordance with applicable laws nor (ii) provide the Easement Holder (in its proprietary capacity hereunder) with any right to review such use and enjoyment of the WSY.

(iii) Access Connections.

- (1) Subject to and in accordance with the requirements of the Zoning Resolution (including certified Site and Landscaping Plans) and, as applicable, the WRY Restrictive Declaration, the High Line Easement shall be subject to the rights of the Parcel Owners to provide Public Connections to the High Line Viaduct and Spur and, to the extent reasonably necessary, to modify the High Line Viaduct and Spur (e.g., removal of balustrades and other structural elements, and attachments to adjoining connection structures) in accordance with the certified Site and Landscaping Plans. All costs and expenses of modifying the High Line Viaduct and Spur and constructing Public Connections pursuant to a certified Site and Landscaping Plan shall be borne by such Parcel Owner. Without limiting the foregoing, each Parcel Owner shall have the right from time to time to request the creation of additional access points to the High Line Viaduct and Spur from areas that are accessible to the general public (but are not Public Connections required by the Zoning Resolution or a certified Site and Landscaping Plan) or from private areas that are not directly accessible to the public, subject to the consent of the Easement Holder, acting in its sole reasonable discretion, it being agreed that it shall be within Easement Holder's reasonable discretion to withhold or condition such consent based upon, without limitation, City policies, practices or rules for such access points along the High Line. Subject to the certified Site and Landscaping Plan, all Public Connections and other connections shall be designed and constructed so as to be distinct from the Viaduct in character and visual identification so that the Viaduct is not merged (aesthetically) into the adjoining Facility Air Space Parcel or Public Connection thereto.
- (2) So long as the entire Viaduct is being used for Public Use in accordance with and as defined in Section 2 below, the Easement Holder may request that the High Line Easement be supplemented to include one or more public pedestrian

access easements incorporating, as appropriate, paved paths, stairwells, elevators and other means of access to the High Line Viaduct and Spur, across the Facility Airspace Parcels (including any adjacent sidewalks) (each, a "City Access Easement"). Each City Access Easement shall be subject to the consent of the affected Parcel Owner(s), acting in its sole reasonable discretion, it being agreed that it shall be within a Parcel Owner's reasonable discretion to deny a request for a City Access Easement that is, without limitation, inconsistent with the actual or planned use or development of the Parcel in such locations (including frontage on and access to adjoining sidewalks) or any Site and Landscaping Plans. All costs and expenses of constructing, operating and maintaining a City Access Easement shall be borne exclusively by the Easement Holder. In the event that the Easement Holder and affected Parcel Owner(s) agree on the creation of a City Access Easement, the Easement Holder and affected Parcel Owner(s) shall execute an agreement in recordable form supplementing this Agreement to include such City Access Easement as part of the High Line Easement.

(3) Neither Easement Holder nor any Parcel Owner shall charge the other a fee or other charge for constructing, maintaining or using any Public Connections or City Access Easements. The High Line Easement shall be further subject to the right of the Parcel Owners to enter upon and allow their invitees to enter upon and ambulate within any portion of the Viaduct and through any access points at all times that such portion of the Viaduct is operated for Public Use and open to the public, subject to all applicable laws, rules and policies of governmental authorities (including without limitation the City).

(4) This Section 1(c)(iii) shall be of no force or effect upon the restoration of Railroad Use, in which case Easement Holder shall secure the Viaduct from public access.

(iv) Right to Change Elevation of WRY High Line.

(1) Notwithstanding anything to the contrary in this Agreement, but subject to the conditions set forth in this Agreement, the WRY Facility Airspace Parcel Owner reserves the right, in connection with the construction of improvements to the WRY Facility Airspace Parcel (in particular, the construction of the LIRR Roof and Facilities), to raise the elevation of the WRY High Line

along 12th Avenue so as to provide adequate ventilation to the WRY Yards Parcel (a "WRY High Line Elevation Alteration").

- (2) A WRY High Line Elevation Alteration shall be subject to the conditions for Parcel Owner Work set forth in Section 1(d)(i) below and the following additional conditions: (A) the continuation of a High Line Easement Area that exists in such location prior to the WRY High Line Elevation Alteration, together with, as necessary, the right to locate Viaduct Support Facilities, so as to preserve the ability of Easement Holder to recreate or reconstruct a fully connected High Line in the event that Railroad Use is required to be restored from where the High Line enters the WRY from the east at 11th Avenue and leaves the WRY to the north at West 33rd Street on the date hereof (as depicted in Exhibit C annexed hereto); and (B) the execution of a written agreement by the WRY Facility Airspace Parcel Owner seeking a WRY High Line Elevation Alteration reimbursing the Easement Holder, in the event of an order (beyond all administrative or judicial appeals) by the federal Surface Transportation Board or successor governmental authorities with jurisdiction over rail use on the Viaduct restoring rail service on the High Line, for any incremental costs and expenses actually incurred by the Easement Holder in complying with such order that are directly and proximately caused by such WRY High Line Elevation Alteration.
- (3) The cost and expense of any WRY High Line Elevation Alteration location requested by a WRY Facility Airspace Parcel Owner shall be exclusively borne by such WRY Facility Airspace Parcel Owner.
- (4) In connection with any WRY High Line Elevation Alteration, the Easement Holder and the Parcel Owner(s) of the Parcel(s) affected by such WRY High Line Elevation Alteration shall execute, acknowledge and deliver an amendment to this Agreement in recordable form establishing the revised description of the High Line Easement Area and otherwise modifying the High Line Easement as necessary. No action or consent shall be required from any Parcel Owner other than the Parcel Owner(s) whose Parcels are physically affected by such WRY High Line Elevation Alteration in order to effectuate a WRY High Line Elevation Alteration as set forth in this Section 1(c)(iv).

(v) Facility Airspace Improvement Support Facilities; Construction Protection.

- (1) Subject to the provisions set forth in this Agreement, the High Line Easement shall be subject to the right of the respective Parcel Owners to make attachments of conduit, drainage, lighting fixtures and other appurtenances to the underside of the Viaduct (i.e., below the High Line Easement Area), including without limitation the Viaduct Support Facilities (collectively, the "Facility Airspace Improvement Support Facilities") and to thereafter repair, maintain, alter, replace and substitute the same. In addition, the respective Parcel Owners shall have the right to integrate and directly connect Facility Airspace Parcel Improvements with the Viaduct Support Facilities and the underside of the Viaduct so as to locate Facility Airspace Parcel Improvements below the Viaduct, including the right to utilize the base of the Viaduct as a portion of the roof of such improvements (it being agreed that Easement Holder makes no assurance and has no obligation with respect to the adequacy or suitability of the base of the Viaduct for such purpose). Easement Holder shall have the right to approve any such integration of the Facility Airspace Improvements with the Viaduct Support Facilities and/or the underside of the Viaduct solely to ensure that the same will not materially impair the structural integrity of the Viaduct or Viaduct Support Facilities nor Easement Holder's ability to inspect, repair, maintain, restore, reconstruct, improve or alter the Viaduct and Viaduct Support Facilities, in accordance with the terms of this Agreement.
- (2) The applicable Facility Airspace Parcel Owner shall maintain the Facility Airspace Improvement Support Facilities in good order and repair and in compliance with law, at its sole cost and expense, and shall promptly repair or restore any damage or conditions relating thereto that could, individually or in the aggregate, if not promptly repaired, cause injury (including death) or damage to persons or property within the High Line Easement Area, or cause damage to the Viaduct or Viaduct Support Facilities, or have a material adverse effect on the uses thereof as contemplated under this Agreement. In the event that the applicable Facility Airspace Parcel Owner fails to maintain, repair or restore the Facility Airspace Improvement Support Facilities in the condition required by this Section 1(c)(v)(2), Easement Holder may deliver

notice to the applicable Facility Airspace Owner demanding in specificity that the applicable condition be remedied. If such condition is not cured within thirty (30) days after the delivery of notice (or if the condition reasonably requires more than thirty (30) days to cure, commencement of the cure has not been commenced and is being diligently prosecuted to completion), then Easement Holder may (but shall not be obligated to) undertake such maintenance, repair and restoration at the sole cost and expense of such Facility Airspace Parcel Owner, and such Facility Airspace Parcel Owner shall promptly reimburse the Easement Holder for all such expenditures made by the Easement Holder after receipt of an invoice therefor.

- (3) To the extent necessary or convenient to construct Facility Airspace Improvements, the Easement Holder shall permit the Facility Airspace Parcel Owners to erect temporary scaffolding, sidewalk shelters, bracing, shoring and other protective measures (collectively, "Construction Protection") within the High Line Easement Area on or over the Viaduct pursuant to plans and specifications approved by the Easement Holder in accordance with Section 1(d)(i)(D) below.

(d) Conditions to Entry and Undertaking of Work.

(i) Entry and Work Undertaken by Parcel Owner.

- (A) Conditions. Notwithstanding anything to the contrary set forth in the Agreement, each Parcel Owner Entry shall be subject to the following conditions: (I) Easement Holder shall be provided with reasonable advance written notice of such Parcel Owner Entry, including a description of the work to be undertaken, except to the extent the such Parcel Owner Entry is required in the case of an emergency or in order to inspect or to correct conditions imminently dangerous to persons or property, in which case such notice shall be provided as the circumstances reasonably permit. Reasonable advance written notice shall be not less than ten (10) days in the case of any inspection or other activity which does not involve any construction work upon or closure of any portion of the Viaduct to the general public, and not less than thirty (30) days in the case of any activity which involves construction work upon or closure of any portion of the Viaduct to the general public (except that sixty (60) days shall be required in the case of any activity which involves full closure of any publicly-accessible portion of the Viaduct during hours in which the Highline is open to the public, i.e., for a WRY Highline Elevation Alteration, or

installation of Facility Airspace Improvements or Construction Protection), (II) the entering Parcel Owner shall comply with the insurance requirements set forth in Exhibit E hereof and incorporated by reference; and (III) the entering Parcel Owner shall prosecute the Parcel Owner Work with due care, in accordance with industry standards and in a diligent manner, and the entering Parcel Owner shall make commercially reasonable efforts to minimize physical interference with Easement Holder's use of the High Line Easement Area and Viaduct.

- (B) Further Conditions. Notwithstanding anything to the contrary set forth in this Agreement, no Parcel Owner Work shall be undertaken without compliance with the following conditions: (I) no Parcel Owner Work (once completed) shall preclude "Railroad Use" (hereinafter defined in Section 2) or the restoration of the Viaduct for such purpose, (II) the Parcel Owner Work shall not exceed the load bearing capacity or otherwise undermine or compromise the structural integrity of the Viaduct, (III) the Parcel Owner Work shall be approved by all necessary governmental agencies having jurisdiction over such Parcel Owner Work, and performed in compliance with New York City Buildings Departments rules, regulations and standards generally applicable to structures similar to the Viaduct or generally applicable to the type of the work being undertaken, (IV) the Parcel Owner Work shall be subject to the terms of that certain Letter of Resolution among the MTA, CPC, the New York State Office of Parks, Recreation and Historic Preservation and WRY Tenant LLC regarding the Western Rail Yard Project and (V) subject to the provisions of this Agreement (including, without limitation, clause (D) below), the Parcel Owner Work shall preserve the ability to use the Viaduct for Public Use (it being agreed that any Parcel Owner Work that is described in a certified Site and Landscaping Plan shall be deemed to satisfy this clause (V)). In addition to the foregoing, Parcel Owner shall take commercially reasonable measures to avoid endangerment of the public and to take commercially reasonable measures to minimize interference with Public Use, and to take all measures as may be necessary to avoid interference with Railroad Use, as may be applicable.

- (C) Plans. Except for inspections, repairs and maintenance, prior to commencing any Parcel Owner Work, the applicable Parcel Owner shall submit reasonably detailed plans and specifications, including a description of means and methods, for the Parcel Owner Work to the Easement Holder, and the Easement Holder shall have thirty (30) days to review such plans and specifications and notify the Parcel Owner of any objection to the extent that the proposed Parcel Owner Work does not comply with the provisions of this

Section 1(d)(i) or any other provisions of this Agreement, acting in its reasonable discretion. In the event that Easement Holder fails to object within said thirty (30) day period (provided that the submission makes reference to this Section 1(d)(i)(C) and expressly states that if Easement Holder fails to object to such proposal within thirty (30) days then the proposal shall be deemed approved by Easement Holder) or upon the resolution of any objections timely made, the Parcel Owner may proceed with the Parcel Owner Work. All Parcel Owner Work shall be undertaken substantially in accordance with the plans and specifications that have been approved or deemed approved by Easement Holder as aforesaid. The Parcel Owner Work shall be undertaken at the sole cost and expense of the Parcel Owner performing such Parcel Owner Work, and such Parcel Owner shall be solely responsible for seeking and obtaining all necessary governmental approvals. Such Parcel Owner shall restore any damage to the Viaduct or Viaduct Support Facilities (but not any alterations to the Viaduct or Viaduct Support Facilities contemplated by the approved or deemed approved plans and specifications) caused by such Parcel Owner during the performance of the Parcel Owner Work to a condition at least as good as that which existed immediately prior to the date of such damage (including without limitation restoration of any and all completed improvements and embellishments made to the Viaduct in accordance with the certified Site and Landscaping Plans, as applicable). Any damage not so repaired upon completion of the Parcel Owner Work may be repaired by the Easement Holder, and the applicable Parcel Owner shall promptly reimburse the Easement Holder for the cost of such restoration upon delivery of a written invoice therefor; provided that Easement Holder has delivered written notice to the applicable Parcel Owner of such damage and such Parcel Owner has not commenced the repair of such damage within thirty (30) days after the receipt of such notice and diligently pursued the same to completion.

- (D) Safety Precautions. Notwithstanding anything to the contrary in this Agreement, in the event that a Parcel Owner performs any Parcel Owner Work or any other work on the WSY for which safety considerations and/or applicable legal requirements necessitate (1) the erection of Construction Protection on or over the Viaduct or any portion thereof (and otherwise within the High Line Easement Area), and/or (2) in the event that Construction Protection is not viable (e.g., in the case of a WRY Highline Elevation Alteration), the temporary closure and suspension of the use of all or any portion of the Viaduct, the Easement Holder shall cooperate with such Parcel Owner in connection with any such erection of Construction Protection or temporary closure at no fee

by or charge to such Parcel Owner. Such Parcel Owner shall pay all costs and expenses relating to the erection, maintenance and removal of the Construction Protection (including without limitation any site preparation and restoration). All Construction Protection shall, to the extent commercially practicable, be erected during hours in which the High Line Viaduct is closed to the general public, and shall be promptly removed after it is no longer necessary. If a Parcel Owner has not commenced and/or is not diligently prosecuting the removal of such Construction Protection after it is no longer necessary, then the Easement Holder may, after ten (10) days written notice to the applicable Parcel Owner, remove the Construction Protection, and such Parcel Owner shall reimburse the Easement Holder for the cost of same after delivery of a written invoice therefor. Each Parcel Owner shall provide the Easement Holder with at least thirty (30) days' notice of any request for the erection of Construction Protection, including reasonably detailed information as to the location and duration of the Construction Protection and/or closures, and the reasons for such Construction Protection and/or closures; provided that in the event of an emergency or imminent danger to persons or property, each Parcel Owner may direct a temporary closure upon such prior notice (if any) that may be practicable under the circumstances.

- (ii) Entry by and Work Undertaken by Easement Holder.
- (A) Conditions. Notwithstanding anything to the contrary set forth in this Agreement, any Easement Holder Entry shall be subject to the following conditions: (I) the affected Parcel Owner(s) shall be provided with reasonable advance written notice of such access or entry, including a description of the work to be undertaken, except to the extent such Easement Holder Entry is required to inspect or to correct conditions imminently dangerous to persons or property. Reasonable advance written notice shall be not less than ten (10) days in the case of any Easement Holder Work which does not involve any construction work from outside the High Line Easement Area, and not less than sixty (60) days in the case of any Easement Holder Work which involves construction work on or to the Viaduct or Viaduct Support Facilities from outside the High Line Easement Area or is otherwise reasonably likely to materially affect the use and enjoyment of the affected Parcel Owner's Parcel, (II) Easement Holder shall comply with the insurance requirements set forth in this Agreement, and (III) Easement Holder shall prosecute the Easement Holder Work with due care, in accordance with industry standards, in a diligent manner and at reasonable times, and Easement Holder shall make commercially reasonable efforts to minimize interference with a Parcel Owner's or WSY Occupant's use of its Parcel. Notwithstanding the foregoing, in no

event may the Easement Holder Entry interfere in any way with the rail operations in the Yards Parcels without the express written consent of the Yards Parcel Owner, in its sole discretion.

- (B) Further Conditions. Notwithstanding anything to the contrary set forth in this Agreement, no Easement Holder Work shall be undertaken without compliance with the following conditions: (I) the Easement Holder Work shall be approved by all necessary governmental agencies having jurisdiction over the portion of the Viaduct or Viaduct Support Facilities and the applicable portion of the WSY upon which entry is requested, and shall be performed in compliance with applicable New York City Buildings Departments rules, regulations and standards, and (II) the Easement Holder Work shall be undertaken at the sole cost and expense of the Easement Holder, including the cost of obtaining any necessary government approvals. Except for inspections, repairs and maintenance, prior to commencing any Easement Holder Entry and/or Easement Holder Work, Easement Holder shall submit plans and specifications, including a description of means and methods (which description will detail the times, manner and locations of any Easement Holder Entry), of the Easement Holder Work to the affected Parcel Owner, and the Parcel Owner shall have thirty (30) days to review such plans and specifications and object, acting in its reasonable discretion, to the extent that the proposed Easement Holder Work does not comply with the provisions of this Section 1(d)(ii) or any other provisions of this Agreement. In the event that the affected Parcel Owner fails to object within said thirty (30) day period (provided that the notice makes reference to this Section 1(d)(ii)(B) and expressly states that if the Parcel Owner fails to object to such proposal within thirty (30) days then the proposal shall be deemed approved by Parcel Owner) or upon the resolution of any objections timely made, the Easement Holder may proceed with the Easement Holder Entry and Easement Holder Work. All Easement Holder Work shall be undertaken in accordance with the plans and specifications that have been approved or deemed approved by the affected Parcel Owner. The Easement Holder shall promptly repair any and all damage that may be caused to a Parcel Owner's Parcel (including any improvements located thereon) as a result of an Easement Holder Entry or Easement Holder Work. Any such damage may be repaired by the affected Parcel Owner, and Easement Holder shall promptly reimburse such Parcel Owner for the cost of such repair upon delivery of a written invoice therefor; provided that such Parcel Owner has delivered written notice to the Easement Holder of such damage and the Easement Holder has not commenced the repair of such damage within thirty (30) days after

the receipt of such notice and diligently pursued the same to completion.

- (C) Parcel Entry Standards. The Easement Holder shall perform any Easement Holder Entry or Easement Holder Work in such a manner as to avoid interference with service reliability of the Yards Parcel Owner's rail operations ("Service Reliability") and endangerment to the safety of any personnel, passengers, or members of the general public related to Yards Parcel Owner's rail operations ("Public Safety"), and to take commercially reasonable measures to minimize interference with the use and enjoyment by and safety of the Facility Airspace Parcel Owners and WSY Occupants of the Facility Airspace Parcels. Easement Holder shall follow and shall require its contractors to follow the directions of field staff of the Yards Parcel Owners in carrying out work upon, under or over the Yards Parcel. If any Easement Holder Work involves entry into any portion of the Yards Parcels, such work shall be further subject to the provisions of paragraph (E) below.
- (D) Site and Landscaping Work. Easement Holder shall not commence undertaking Site and Landscaping Plan improvements prior to April 1, 2013. Nothing herein shall be construed to proscribe Easement Holder from undertaking structural rehabilitation, paint removal, ballast and track removal, painting and other remediation work at any time prior to such date, upon and subject to all of the terms of this Agreement.
- (E) Yards Entry Requirements. In addition to the other requirements of this Agreement, any Easement Holder Entry into or upon any portion of the Yards Parcels shall be undertaken only upon the issuance of, and subject to the terms of, an entry license given to the Easement Holder by the Yards Parcel Owner, acting in its quasi-governmental capacity for railroad operations (the "Railyards Entry License"). The Railyards Entry License shall set forth terms and conditions for such Easement Holder Entry as Yards Parcel Owner shall deem necessary for Service Reliability and Public Safety, giving due consideration to the nature and extent of any Easement Holder Work to be undertaken in the course of such Easement Holder Entry. Such terms and conditions may address, as appropriate, such matters as means and methods of construction, coordination with railyards personnel, review of plans and logistics for the construction work, construction scheduling, payment of force account, inspections, and other matters related to Service Reliability and Public Safety; provided, that the Railyards Entry License shall not impose terms or conditions which are inconsistent with those specifically addressed in this Agreement, including, but not limited to, provisions relating to indemnification and insurance. The Railyards Entry License terms

and conditions otherwise shall generally be consistent with the terms and conditions required by the Yards Parcel Owner for comparable work in comparable work areas. Yards Parcel Owner shall issue a Railyards Entry License within thirty (30) days of request by Easement Holder or its contractor, which request shall attach a description of the nature of the Easement Holder Entry, plans and specifications for the construction work, if any, proposed to be performed and the High Line and WSY areas involved, means and methods of transporting materials and equipment through the WSY, and proposed construction scheduling. The parties shall cooperate to supply information to each other in order to finalize a Railyards Entry License upon terms and conditions described above. All Easement Holder Work undertaken pursuant to the Railyards Entry License shall be performed and conducted in compliance with the requirements of this Agreement and the Railyards Entry License, and in such manner as to avoid interference with Public Safety or Service Reliability.

(iii) Construction Period Coordination. Parcel Owners and Easement Holder acknowledge and agree that the procedures for a Parcel Owner Entry and an Easement Holder Entry (and the performance of the applicable Parcel Owner Work and Easement Holder Work) as set forth in this Agreement, will require ongoing coordination in order to ensure that the initial construction of the Facility Airspace Parcel Improvements and the restoration and conversion of the Viaduct for Public Use may mutually proceed in a timely and safe manner. Accordingly, the Parcel Owner and Easement Holder agree that during such construction periods, the parties shall, notwithstanding anything to the contrary in this Agreement, comply with the following procedures:

- (A) The applicable Parcel Owner and the Easement Holder shall designate persons (who will be either on-site or available during all business hours) and shall be authorized to make decisions on behalf of the Parcel Owner or the Easement Holder, as applicable (such person, the "Authorized Person"). Such Authorized Person shall have the power to approve any Parcel Owner Entry and/or Easement Holder Entry (and the applicable plans for Parcel Owner Work and/or Easement Holder Work), as applicable, as set forth in this Agreement.
- (B) Each party's Authorized Person (or his or her designee) shall be invited and shall attend regularly scheduled coordination meetings at which any modifications to anticipated Parcel Owner Entries and Easement Holder Entries shall be reviewed and approved, it being acknowledged and agreed that the

purpose of such coordination meetings is to facilitate expeditious responses to changes in the time and/or nature of a Parcel Owner Entry (and Parcel Owner Work) and Easement Holder Entry (and Easement Holder Work).

- (C) Any disputes as to the approval or modification of a Parcel Owner Entry (and Parcel Owner Work) and/or Easement Holder Entry (and Easement Holder Work) shall be resolved by each party's Authorized Persons. If such Authorized Persons are unable to resolve such dispute within three (3) days, then either party may refer such dispute to the president (or similar officer) of the Parcel Owner and the Commissioner of the New York City Department of Parks and Recreation (or the head of whichever agency of the City is exercising managerial control over the Viaduct) and the Deputy Mayor having oversight of such City agency. Nothing herein shall limit any rights or remedies of either party in accordance with Section 27 if such dispute is not resolved within five (5) days following such referral.

2. **Permitted Uses of High Line Easement.** The High Line Easement may be used only for the following uses ("Permitted Uses"), in compliance with the provisions of this Agreement and applicable law: (i) the operation of railroad trains or other movable railroad equipment on and over tracks located or to be located within the High Line Easement Area and such other railroad activities that are ancillary thereto, together with the right to install and use trackage, wires, conduits, cables, rails, signals and appurtenances thereto and perform any other railroad operations within the High Line Easement Area as may be required by or in furtherance of an order or ruling then in force and effect by the federal Surface Transportation Board or successor governmental authority with jurisdiction over rail use on the High Line ("Railroad Use"), and (ii) in the absence of Railroad Use, public space, public trail use or other public recreational purpose, as general municipal property, in accordance with any applicable terms, to the extent same are in force and effect, of the CITU and the TUA ("Public Use"); provided that nothing herein shall obligate Easement Holder to use the portion of the High Line that traverses over the ERY the "ERY High Line" for Public Use until the Facility Airspace Parcel Owner makes (or causes to be made) the "High Line Rehabilitation Deposit" and the "High Line Landscape Improvement Deposit" (as each such term is defined in the New York City Zoning Resolution). Whenever using the High Line Easement Area for Public Use, the High Line Easement Area shall be operated and maintained in a manner so as to qualify as "publicly accessible open space" within the meaning of Section 93-75 of the Zoning Resolution with respect to the WRY High Line and in compliance with Section 93-71 of the Zoning Resolution with respect to the ERY High Line, in each case in accordance with any applicable certified Site and Landscaping Plans, for so long as and to the extent such provisions of the Zoning Resolution (or successor provisions) and the certified Site and Landscaping Plans (or instruments implementing same) are in force and effect. Easement Holder shall undertake the design

and rehabilitation of the High Line Easement Area for Public Use (except for the condition precedent for Easement Holder's obligation in connection with the ERY High Line as set forth above in this paragraph), and shall consult on an ongoing basis with the Facility Airspace Parcel Owner in connection therewith. The High Line Easement may not be used for any purposes inconsistent with the Permitted Uses. Without limiting the foregoing limitations on Permitted Uses, it is acknowledged and agreed that the Facility Airspace Parcel Owners and the Easement Holder may enter into one or more supplemental agreements with respect to the design, construction, improvement, maintenance and support of the High Line for Public Use.

3. **Use and Access Prior to Completion of the LIRR Roof and Facilities. Interim Period Use.** From the date hereof to the earlier to occur of the following (the "Interim Period"): (i) completion by the Parcel Owners of the LIRR Roof and Facilities covering the entire Yards Parcels, or (ii) the recordation against the Yards Parcel and the Facility Airspace Parcel of an agreement among the Easement Holder and the Yards Parcel Owners declaring that the Interim Period hereunder has expired, the Easement Holder may open all or a portion of the High Line Viaduct and Spur for Public Use, upon and subject to the provisions of this Agreement. Throughout the Interim Period, the Easement Holder agrees to comply with all rules and regulations generally applicable to the Yards Parcels now in effect or which may be hereafter be promulgated by the Yards Parcel Owner(s) and provided to the Easement Holder ("Yards Parcel Rules").
- (b) **Interim Period Access.** The location of physical access points to the High Line Viaduct through the WSY during the Interim Period will be subject to approval by each affected Parcel Owner, in its sole discretion and in accordance with Section 1(c)(iii) above, provided however, that no access points shall be located within the Yards Parcel and no access points shall in any way create or afford any entry whatsoever into the Yards Parcel. Easement Holder shall be responsible for and shall take reasonable steps to enforce compliance by the general public during the Interim Period with Yards Parcel Rules.
- (c) **Interim Period Safety Requirements.**
- (i) **Interference with Public Safety and Service Reliability.** During the Interim Period, the Yards Parcel Owner(s) may, as a condition to use of the High Line Viaduct and Spur for public space, require the Easement Holder, at its sole cost and expense, to make such installations and improvements within the High Line Easement Area as the Yards Parcel Owner(s) determine may be reasonably required in order to deter and avoid interference with Public Safety and Service Reliability by members of the general public traversing the High Line Easement Area (e.g., appropriate fencing, and walkways set back from the edge of the High Line Viaduct and

Spur). Such improvements shall be subject to review by the Yards Parcel Owner(s) in the same manner as Easement Holder Work. In its review of such improvements, the Yards Parcel Owner(s) shall use reasonable efforts to accommodate the purpose of the Easement Holder's acquisition of the Viaduct and the High Line Easement for public space, including without limitation the enjoyment of views from the High Line Viaduct and Spur.

- (ii) Unsafe Conditions. Notwithstanding the foregoing, if, during the Interim Period, the Yards Parcel Owner determines that the public space of the High Line Easement poses a significant threat to Public Safety or Service Reliability, the Yards Parcel Owner will so notify the Easement Holder in writing, describing with reasonable particularity the unsafe conditions (the "Unsafe Conditions"). Such notice shall make reference to this Section 3(c)(ii) and state that Easement Holder has five (5) days to correct the Unsafe Conditions. Upon receipt of a notice of Unsafe Conditions, the Easement Holder shall have five (5) days to correct the Unsafe Conditions to the reasonable satisfaction of the Yards Parcel Owner. Should the Easement Holder fail to correct the Unsafe Conditions to the reasonable satisfaction of the Yards Parcel Owner within said five (5) day period, the Yards Parcel Owner shall have the right: (i) at its option (but with no obligation), to take any measures reasonably necessary to correct the Unsafe Conditions, including making a Parcel Owner Entry in upon or through the High Line Easement to correct such Unsafe Conditions, at the sole cost and expense of the Easement Holder; or (ii) if the Unsafe Conditions pose imminent threats to Public Safety or Service Reliability, in the judgment of the Yards Parcel Owner, to revoke the Easement Holder's right to use the Viaduct for public space until the Unsafe Conditions are corrected to the reasonable satisfaction of the Yards Parcel Owner.
- (iii) Emergency Situations. Notwithstanding the foregoing, if during the Interim Period, in the judgment of the Yards Parcel Owner, there are Unsafe Conditions that, if not rectified promptly, would have an immediate and significant adverse impact on Public Safety or Service Reliability (an "Emergency Situation"), then the Yards Parcel Owner shall have the right (but not the obligation), without providing advance notice to the Easement Holder, to repair and make safe, or cause to be repaired and made safe, the Emergency Situation at the sole cost and expense of the Easement Holder, and to close the public space use of the Viaduct until the Emergency Situation no longer exist (an "Emergency Response"). In the event that the Yards Parcel Owner undertakes an Emergency Response, the Yards Parcel Owner shall notify the Easement Holder with reasonable particularity of any work undertaken and expense

incurred in connection therewith within five (5) days of such Emergency Response.

4. **(Intentionally left blank)**

5. **Indemnifications.**

(a) Indemnity of Parcel Owners by Easement Holder. The Easement Holder shall indemnify, defend and hold harmless each Parcel Owner, the FASP Owners Associations (as hereinafter defined), and each of their respective subsidiaries, affiliates, agents, servants, directors, officials, officers and employees (collectively, the "Parcel Owner Indemnitees") from and against claims for any and all loss, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses which may be suffered by, imposed upon or incurred by or asserted against any of the Parcel Owner Indemnitees by a third party (a "Claim"), arising from (i) Railroad Uses, (ii) personal injury (including death) and property damage arising from Easement Holder's use, operation, development, construction, reconstruction, replacement, improvement, maintenance or repair work of, on or to the Viaduct or Viaduct Support Facilities (including, without limitation, any Easement Holder Entry and Easement Holder Work), except in any event to the extent caused by the negligence (including gross negligence) or intentional misconduct of the Parcel Owner Indemnitee, and provided further that, with respect to use and operation, Easement Holder shall have no obligation under this paragraph with respect to claims by third parties to the extent arising out of actions of members of the general public or other persons or entities who are neither agents nor employees of Easement Holder nor under contract with an Easement Holder in connection with the Viaduct or the Viaduct Support Facilities, and (iii) the storage, transportation, disposal, spill, emission, leaking, pumping, injection, deposit, discharge, disposal, leaching, migration, release or threatened release by Easement Holder or any of its employees, guests, contractors, subcontractors, representatives or agents of any Hazardous Materials (as hereinafter defined) in, on or from the WSY (including without limitation in connection with any Easement Holder Work), or any Claim against any Parcel Owner Indemnitees concerning or related to the existence of any Hazardous Materials in or on the Viaduct or Viaduct Support Facilities; provided, that in no event shall Easement Holder be obligated to defend, hold harmless or indemnify any Parcel Owner for any claim arising out of Parcel Owner Work or any act or omission of any Parcel Owner Indemnitee. For purposes of this paragraph "Hazardous Materials" means any waste, pollutant, hazardous substance, hazardous material, hazardous waste, special waste, solid waste, petroleum or petroleum-derived substance or waste, asbestos, polychlorinated biphenyls ("PCBs"), or any constituent of any such substance or waste, which is defined in or regulated by any Environmental Law. For purposes of this paragraph, Environmental Law shall mean any of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C., §§9601 et seq., the National Environmental Policy Act of 1969, 42 U.S.C., §§4321 et seq., the Energy Policy and Conservation Act, 42 U.S.C., §6362, the Coastal Zone Management

Act of 1972, 16 U.S.C., §§1451 et seq., Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 59 FR 7629, February 11, 1994), the Resource Conservation and Recovery Act, 42 U.S.C., §§6901 et seq., the Toxic Substances Control Act, 15 U.S.C., §§2601 et. seq., the Federal Water Pollution Control Act, 42 U.S.C., §§1251 et. seq., the Hazardous Materials Transportation Act, 42 U.S.C. §§5101 et. seq., or the New York Environmental Conservation Law, §§1-0101 et. seq., all of which as have been amended or may be amended in the future or under any other federal, state or local law, statute, rule, regulation or common law theory now or hereafter in effect, and designed to protect human health or the environment.

(b) Indemnification of Easement Holder. Each Parcel Owner, severally and not jointly and with respect to its own Parcel, shall indemnify, defend and hold harmless the Easement Holder, its subsidiaries, affiliates, agents, servants, directors, officials, officers and employees, its instrumentalities (including without limitation New York City Economic Development Corporation) and their subsidiaries, affiliates, agents, servants, directors, officials, officers and employees, and any conservancy, caretaker or custodian with which the City may contract and its subsidiaries, affiliates, agents, servants, directors, officials, officers and employees with, designate or appoint to improve, maintain, promote or manage the Viaduct and Viaduct Support Facilities, including, but without limitation, Friends of the High Line, Inc. (the "Easement Holder Indemnitees"), from and against any and all Claims by third parties arising from the following matters, acts or omissions by or on behalf of such Parcel Owner or its officials, officers, agents, or employees (i) the development, construction, reconstruction, replacement, improvement, maintenance or repair work of, on or to the respective Parcel Owner's Parcel (including without limitation any Parcel Owner Entry or Parcel Owner Work but in no event extending to use and operations related to rail service on the Yards Parcels), or relating to any such work by such Parcel Owner, except to the extent caused by the negligence (including gross negligence) or intentional misconduct of the Easement Holder Indemnatee, and provided further that, with respect to use and operation, no Parcel Owner shall have any obligation under this paragraph with respect to claims by third parties to the extent arising out of actions of members of the general public or other persons or entities who are neither agents nor employees of Parcel Owner nor under contract with the indemnifying Parcel Owner in connection with such Parcel Owner's Parcel), or (ii) the storage, transportation, disposal, spill, emission, leaking, pumping, injection, deposit, discharge, dispersal, leaching, migration, release or threatened release by Parcel Owner or any of its employees, guests, contractors, subcontractors, representatives or agents of any Hazardous Materials in connection with any Parcel Owner Work; provided, that in no event shall any Parcel Owner be obligated to defend, hold harmless or indemnify any Easement Holder Indemnatee for any claim arising out of Easement Holder Work or any act or omission of any Easement Holder Indemnatee.

(c) Conditions of Indemnity. The indemnifications contained in this Agreement are subject to the following conditions: the Parcel Owner Indemnitees or the Easement Holder Indemnitees, as appropriate, (either of the Parcel Owner Indemnitees or the Easement Holder Indemnitees, as appropriate, are referred to as "Indemnitees") shall (i) promptly notify party liable for indemnification (the "Indemnitor") of any claim, action or proceeding for which it seeks indemnification; (ii) consent to the reasonable settlement of any claim, action or proceeding which is fully covered by the indemnification provided by Indemnitor, and does not otherwise create liability to the Indemnatee not covered by the indemnification; and (iii) without incurring any liability or material out-of-pocket expenses, reasonably cooperate with the Indemnitor and its designees and insurers in connection with any claim, action or proceeding. Each Parcel Owner's and Easement Holder's obligation to defend, indemnify and hold an Indemnatee harmless shall not be limited in any way by the Parcel Owner's or Easement Holder's (respectively) obligations to obtain and maintain insurance under this Agreement.

6. Annual Closure. Each Parcel Owner shall have the right, upon reasonable advance notice, to close each (private) sidewalk, driveway, ramp, stairway and exit one day each calendar year, for the purpose of preventing any public easement over and through each such (private) sidewalk, driveway, ramp, stairway or exit from arising. Nothing in this Agreement shall be construed in any way to permit closure of any access/exit facilities to and from public streets and sidewalks directly to the Viaduct which do not traverse or encroach upon any part of the WSY.

7. Restoration of Rail Services. Each Parcel Owner covenants and agrees not to petition the federal Surface Transportation Board or successor governmental authorities with jurisdiction over rail use on the High Line and the Spur for restoration of rail service over the High Line and/or the Spur. Easement Holder shall promptly provide notice to the Parcel Owners upon its receipt of any petition or application for the restoration of any such rail service (except to a Parcel Owner which files or serves such petition). Easement Holder and each Parcel Owner shall have all rights and remedies available at law or equity to enforce the provisions of this Section, including without limitation, seeking an injunction enjoining a threatened breach of this Section.

8. Easement Holder Insurance

(a) Requirements. The Easement Holder shall provide or cause to be provided, and keep in force, at its sole cost and expense, the required insurance described in Exhibit D attached hereto. The Easement Holder shall notify the Parcel Owners of any of any claims of which the Easement Holder becomes aware, as more particularly provided in Exhibit D.

(b) OCIP/CCIP. Easement Holder may provide the Worker's Compensation, Disability, Employer's Liability and/or Commercial General Liability insurance coverage required under this Agreement through a Contractor Controlled Insurance Program ("CCIP") or an Owner Controlled Insurance Program

("OCIP") subject to obtaining consent of the party for whose benefit the insurance coverage is required, which consent shall not be unreasonably withheld. If the Easement Holder elects to provide such coverages through a CCIP or an OCIP, and the party for whose benefit the insurance coverage is required consents thereto in writing, said coverages shall in all respects meet the requirements set forth in this Agreement.

9. Maintenance, Repair and Restoration

- (a) Easement Holder to Maintain, Repair and Restore. The Easement Holder shall maintain the Viaduct and Viaduct Support Facilities in good order and repair and in compliance with applicable laws, at its sole cost and expense, and shall promptly repair or restore any damages or conditions relating thereto that could, individually or in the aggregate, if not repaired, cause injury (including death) or damage to persons or property, or materially adversely affect Public Safety or Service Reliability, or otherwise have a material adverse effect on the use and enjoyment of the WSY. Subject to restoration of Railroad Use, all repairs to the Viaduct shall be in compliance with the certified Site and Landscaping Plan (for as long as same is in force and effect) and all applicable legal requirements and shall preserve the use of the Viaduct for Public Use in accordance with Section 2 above.
- (b) Self-Help by Parcel Owner. In the event that the Easement Holder fails to maintain or repair Viaduct and Viaduct Support Facilities in the condition required by Section 9(a), any Parcel Owner may, if such condition remains uncured after thirty (30) days notice and demand to the Easement Holder (or such shorter period of time as shall be appropriate in order to prevent imminent injury (including death) or damage to persons or property), which notice shall make reference to this Section 9(b) of this Agreement and the thirty (30) day (or shorter) period set forth herein, undertake such maintenance, repair and restoration at the sole cost and expense of the Easement Holder, and the Easement Holder shall promptly reimburse such Parcel Owner for all such expenditures made by such Parcel Owner following the receipt of a reasonably detailed invoice therefor.

10. Covenant Not to Map. Subject to applicable law (including without limitation Section 25-102 of the New York City Administrative Code), the Easement Holder covenants not to institute or support proceedings to map as a park any portion of the High Line Easement Area or Viaduct without the prior written consent of the Yards Parcel Owners and the Facility Airspace Parcel Owners, to be granted or withheld in their sole and absolute discretion.

11. CITU or TUA Termination. The Parcel Owners covenant and stipulate that the surrender or other termination of the CITU and/or the TUA between the City and CSXT and/or the issuance of an order of abandonment or other order to similar effect by the federal Surface Transportation Board or its successor-in-function shall not in any way impair, diminish, void, invalidate, extinguish, terminate or otherwise affect this

Agreement (including, without limitation, all rights and obligations of Easement Holder to utilize the High Line Easement for Public Use); provided that nothing herein shall limit any rights or remedies of any Parcel Owner on account of any default by Easement Holder of any of its obligations hereunder or any other agreement between a Parcel Owner and the Easement Holder (which may include other parties) relating to the High Line and/or the Spur.

12. Amendment and Restatement of Easement. This Agreement is intended to amend and restate the Original High Line Easement in its entirety. Following the execution of this Agreement, all rights, interests, entitlements and obligations of the Parcel Owners and Easement Holder with respect to the High Line Easement shall be solely as set forth in this Agreement, and any rights of the Easement Holder with respect to the WSY set forth in any other documents or agreements, including without limitation, those documents and agreements listed on Exhibit B, shall be null and void and no longer have any force and effect.

13. Subordination. The ERY Declaration, the WRY Declaration, the ERY Balance Lease, the Tower C Lease, and the WRY Lease are hereby declared to be subject and subordinate to this Agreement; provided, however, that nothing herein shall be deemed to amend, modify or otherwise affect any rights, liabilities or obligations that may benefit or bind the MTA and/or LIRR, on the one hand, and ERY Tenant and/or WRY Tenant and/or Tower C Tenant, on the other hand (or otherwise as may run among the Parcel Owners) as set forth in or contemplated by any of the foregoing agreements.

14. Proprietary Capacity. Except as otherwise expressly provided in this Agreement, The Yards Parcel Owner and Easement Holder are entering into this Agreement in their proprietary, and not regulatory, capacity. All rights and obligations under this Agreement are subject to applicable law and regulation of all governmental authorities of competent jurisdiction.

15. Donor Agreement; Signage. Easement Holder shall not locate (or permit the location of) any "advertising signs", as such term is defined in the Zoning Resolution, within the High Line Easement Area, on the exterior of the Viaduct or on any of the Viaduct Support Structures, it being agreed, however, that signage recognizing donations to be used in connection with the High Line (including without limitation those under the Donor Recognition Agreement) do not constitute "advertising" signage and shall be permitted, provided that with respect to donor recognition signage other than that contemplated under the Donor Recognition Agreement are of a scale and design similar to other donor recognition signage then existing on the High Line.

16. Separability. If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this agreement, or the application of such term or provisions to persons or circumstances to which it is valid or enforceable, shall not be affected thereby, and each term and provision of this agreement shall be valid and enforced to the extent permitted by law.

17. **Recording.** This Agreement shall be recorded in the Office of the City Register, New York County, promptly following the execution and delivery hereof, by the Easement Holder at the Easement Holder's sole cost and expense (if any).

18. **Captions; Plurals; Gender.** Section headings, captions, titles and exhibit headings to this Agreement are for convenience and reference only, and are in no way to be construed as defining, limiting, or modifying the scope or intent of the various provisions of this agreement. The plural shall be substituted for the singular, and the singular for the plural, where appropriate, and the words of any gender shall mean and include any other gender.

19. **Successors and Assigns; Applicable Parcel Owner.**

(a) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Easement Holder and the Parcel Owners, and their respective successors and assigns. Except as expressly set forth in this Agreement, this Agreement does not and is not intended to confer any benefits upon, or create any rights in favor of, any other persons. Notwithstanding the foregoing, prior to the restoration of Railroad Use, the City may not assign, convey or otherwise transfer its rights and obligations as Easement Holder hereunder to any other person or entity other than to an instrumentality of the City of New York or to the State of New York or any instrumentality or public benefit corporation thereof; provided that no such transfer shall be permitted if the transferee shall be unable to comply with all of the obligations of the Easement Holder hereunder. Provided that the transferee as described above executes and delivers an instrument, in recordable form, a copy of which is delivered to the Parcel Owners, by which the transferee expressly assumes the obligations accruing under this Agreement from and after the date of transfer, the City shall have no liability under this Agreement for obligations accruing from and after the date of such transfer.

- (b) Lease of Facility Airspace Parcel. For so long as any lease of the Facility Airspace Parcels (or any portion thereof) from MTA, as landlord, to ERY Tenant, WRY Tenant, Tower C Tenant or another person, as tenant, is in effect as contemplated by the ERY Balance Lease, the Tower C Lease, and/or the WRY Agreement to Enter into Lease, the respective tenant(s) under such lease(s), and not MTA as fee owner, shall be deemed to be the Facility Airspace Parcel Owner with respect to the premises demised by such lease (such demised premises, a "Parcel") and shall have the exclusive authority to act as a Facility Airspace Parcel Owner without the consent of the MTA for all purposes of this Agreement. In addition, for so long as the WRY Agreement to Enter into Lease is in full force and effect, any consent or approval by the MTA under this Agreement as Facility Airspace Parcel Owner shall be conditioned on the delivery of written consent by the WRY Tenant, provided that such consent or approval by the WRY Tenant shall be subject to the conditions, standards and limitations for approval or consent set forth in this Agreement for a Parcel Owner with respect to such matters.
- (c) Applicable Parcel Owner. Subject to paragraph (b) above of this Section 19, wherever a right or obligation, including right of consent, in this Agreement is said to be that of a Parcel Owner, all Parcel Owners whose Parcels are physically affected by the matter in question shall be entitled to exercise such right or perform such obligation, and no Parcel Owner whose Parcel is not physically affected, or the use and enjoyment of its Parcel is not affected, by the matter in question, shall be entitled to exercise such right or perform such obligation. Where more than one Parcel Owner is entitled to exercise a right hereunder, including the right to consent to a matter in question, the consent of all Parcel Owners so entitled shall be obtained before such right or consent shall be effective. Nothing herein shall limit the rights of a Parcel Owner to indemnification under Section 5 of this Agreement, which shall be applicable to all Parcel Owners.
- (d) Facility Airspace Parcel Owners' Associations. The Easement Holder acknowledges that the ERY Facility Airspace Parcel Owner intends to create an owners' association for the ERY Facility Airspace Parcel (the "ERY FASP Owners Association") and the WRY Facility Airspace Parcel Owner intends to create an owners' association for the WRY Facility Airspace Parcel (the "WRY FASP Owners Association"), and together with the ERY FASP Owners Association, each a "FASP Owners Association"). The Easement Holder shall accept the exercise of any rights or remedies by the ERY FASP Owners Association on behalf of the ERY Facility Airspace Parcel Owner and by the WRY FASP Owners Association on behalf of the WRY Facility Airspace Parcel Owner, subject to the terms, conditions and covenants set forth in this Agreement that apply to the respective Facility Airspace Parcel Owner. The ERY FASP Owners Association shall be an express third party beneficiary of all rights of the ERY Facility Airspace Parcel Owner hereunder, and the WRY FASP Owners Association shall be an express third party beneficiary of all rights of the WRY Facility Airspace Parcel Owner hereunder. Upon its formation, each FASP

Owners Association shall deliver written notice thereof to the Easement Holder, and from the date of such notice, the Easement Holder shall deliver to the ERY FASP Owners Association a copy of any notice delivered to the ERY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the ERY) and to the WRY FASP Owners Association a copy of any notice delivered to the WRY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the WRY).

20. **Exhibits.** All Exhibits attached hereto are incorporated by reference and hereby made a part hereof.

21. **No Amendment.** Neither this Agreement nor any provision hereof may be changed, modified, amended, supplemented, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, modification, amendment, supplement, waiver, discharge or termination is sought.

22. **No Waivers.** The failure of the Easement Holder or a Parcel Owner to seek redress for violations or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof and the Easement Holder or such Parcel Owner, as the case may be, shall have all remedies provided herein and under applicable law with respect to any subsequent act which originally would have constituted a violation or default hereunder.

23. **Survival.** Subject to and except as limited by the other terms of this Agreement, the obligations, undertakings, duties, and covenants of each of the Easement Holder and the Parcel Owners shall survive the delivery and recording of this Agreement.

24. **Notices.** Any notice, request, consent or other communication under this Agreement ("Notice" or "notice") shall be in writing and sent by registered or certified Mail, return receipt requested, or by hand delivery, express mail or overnight delivery with a receipt service. The date such notice shall be deemed to have been given shall be the date of receipt, the first calendar day after the date sent by courier, express or overnight ("next day delivery"), or the third calendar day after the postmark on the envelope if mailed, whichever occurs first. Notices to the Easement Holder shall be sent to:

The City of New York
Department of Parks and Recreation
The Arsenal
Central Park
New York, New York 10021

with a copy to:

New York City Law Department
100 Church Street
New York, New York 10007

Attn: Chief, Economic Development Division

Notices to the Yards Parcel Owners shall be sent to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

and to:

Paul, Weiss, Rifkind Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Meredith J. Kane, Esq.

Notices to the ERY Facility Airspace Parcel Owner shall be sent to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

and to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Meredith J. Kane, Esq.
With a copy to:

ERY Tenant LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Mr. Jeff T. Blau and Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

and to:

Legacy Yards Tenant LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Mr. Jeff T. Blau and Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

Notices to the WRY Facility Airspace Parcel Owner shall be sent to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

and to:

Paul, Weiss, Rifkind Wharton & Garrison LLP

1285 Avenue of the Americas
New York, New York 10019
Attn: Meredith J. Kane, Esq.

With a copy to:

WRY Tenant LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Mr. Jeff T. Blau and Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in the manner described in this Section of the Agreement. Any counsel designated above or any replacement counsel is hereby authorized to give notices hereunder on behalf of its client.

Upon the creation of one or more Severed Parcels, the ERY Facility Airspace Parcel Owner and/or the WRY Facility Airspace Parcel Owner, as applicable, shall notify the Easement Holder and the Yards Parcel Owner of the creation of such Severed Parcel, the Severed Parcel Owner thereof and the persons or entities entitled to receive notices hereunder. Upon the formation of a FASP Owners Association, the applicable Facility Airspace Parcel Owner shall deliver written notice thereof to the Easement Holder. Following receipt of such notice, the Easement Holder shall deliver to the ERY FASP Owners Association a copy of any notice delivered to the ERY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the ERY) and to the WRY FASP Owners Association a copy of any notice delivered to the WRY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the WRY).

In the event that the MTA notifies the Easement Holder that the ERY Balance Lease, the Tower C Lease, and/or the WRY Agreement to Enter into Lease has been terminated, then the notice parties for the ERY Facility Airspace Parcel Owner, any Severed Parcel Owner, and/or the WRY Facility Airspace Parcel Owner, as applicable, shall be the same as for the Yards Parcel Owner.

25. Due Authorization; Complete Agreement. The persons executing this Agreement on behalf of each of the Easement Holder and the Parcel Owner represent and warrant, each for himself or herself and the respective principal parties, that each has been duly authorized to execute this Agreement for and on behalf of the Easement Holder and the Parcel Owner, respectively. All understandings and agreements heretofore made between the parties hereto relating to the particular subject matter hereof are merged in

this Agreement, which alone fully and completely expresses the agreement between the Easement Holder and the Parcel Owner on such matters.

26. **Exculpation**. Notwithstanding anything to the contrary herein, in no event shall any of the members, managers, affiliates, trustees, directors, officers, officials, employees, agents or servants of Easement Holder or any Parcel Owner have any liability (personal or otherwise) under or by reason of this Agreement or any of the matters contemplated by this Agreement or shall be subject to levy, execution or other enforcement procedure for the satisfaction of any party's remedies hereunder.

27. **Enforcement**. In the event of any breach or violation or threatened breach or violation by any party of the terms and conditions provided herein, the non-breaching parties will have, in addition to the right to claim damages, the right to enjoin such breach or violation or threatened breach or violation or to seek specific performance in a court of competent jurisdiction. In no event shall any party or any person acting by or on behalf of a party be liable for consequential or punitive damages to any person hereunder. Each party hereby waives all rights to trial by jury in any action or proceeding arising out of this Agreement.

28. **Estoppel Certificates**. Whenever requested upon at least ten (10) days' prior written notice from another party (or its designee, including a mortgagee or potential mortgagee), the requested party shall furnish to such requesting party or its designee a written statement, setting forth: (a) whether this Agreement is in full force and effect; (b) the extent to which this Agreement has been modified, whether by instrument of record or otherwise; (c) the extent to which, to the best of the certifying party's knowledge, any other party is in default under this Agreement, which default remains uncured; and (d) any other information known to the certifying party and reasonably requested by the requesting party. Such statement may be relied upon by the requesting party and said designee.

29. **Governing Law**. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of laws and rules of such state.

30. **Further Assurances**. The Easement Holder and the Parcel Owners shall execute and deliver such further documents, and perform such further acts, as may be reasonably required to carry out the intent and purposes of this Agreement and to otherwise facilitate the development, use and enjoyment of the WSY and Viaduct as contemplated hereunder.

31. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

32. **No Right to Utilize Development Rights**. Notwithstanding anything to the contrary herein, in no event does this Agreement grant the Easement Holder the right to utilize or convey any Development Rights (as defined below) appurtenant to the WSY, and this Agreement does not provide the Easement Holder with any right, title or interest

in any such Development Rights. Easement Holder hereby agrees that it shall not make any structural additions to the Viaduct that would utilize any Development Rights. Accordingly, it is intended that the Easement Holder not be deemed a "party in interest" as such term is defined in Section 12-10 of the Zoning Resolution with respect to the WSY in its capacity as Easement Holder hereunder or otherwise in connection with the CITU or TUA, and the Easement Holder hereby waives any rights it may have to execute any agreements or otherwise consent to any actions that would be required if it were deemed to be a "party in interest". Without limiting the foregoing, the Easement Holder shall, upon the request of a Parcel Owner, promptly execute at no cost to such Parcel Owner any documents confirming the foregoing, and, if required, consenting to (or waiving its right to consent to) any agreements, actions, declarations or other documents to which the consent of a "party in interest" is required; provided that such documents do not violate this Agreement.

For the purposes of this Agreement, "Development Rights" shall mean the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop such zoning lot by erecting thereon a structure or structures with (i) a total floor area determined by multiplying the area of the zoning lot by the maximum allowable floor area ratio for structures in the zoning district or districts in which such zoning lot is located, and (ii) any bulk, density and other development rights permitted under the Zoning Resolution, and (iii) any "bonus" Development Rights permitted under the Zoning Resolution.

33. Status of WSY Development and Viaduct. It is understood and acknowledged that this Agreement is being executed prior to the full development of plans (a) by the Easement Holder for the conversion of the Viaduct to Public Use as contemplated by this Agreement, and (b) by the Parcel Owners (including ERY Tenant, WRY Tenant, Tower C Tenant, their respective affiliates and future WSY Occupants) for the construction of the LIRR Roof and Facilities, the Facility Airspace Improvements, the Site and Landscaping Plans and the general operations of the WSY (including, without limitation, the location of utilities, sewers and related facilities, pedestrian and vehicular access, etc.). Without limiting anything in this Agreement, the parties agree to cooperate in good faith and with reasonable diligence to facilitate the development of the WSY and the Viaduct as contemplated by this Agreement and in recognition of (i) the significant financial investment by Easement Holder, Parcel Owners, WSY Occupants, and their respective partners, lenders, affiliates and investors, (ii) the mutual benefit that the development of the WSY and the Viaduct shall have to all parties and the City as a whole, and (iii) the covenants, obligations and liabilities that Parcel Owners and Easement Holder may have with third parties to timely perform construction activities or otherwise provide for the use and enjoyment of the WSY and the Viaduct.

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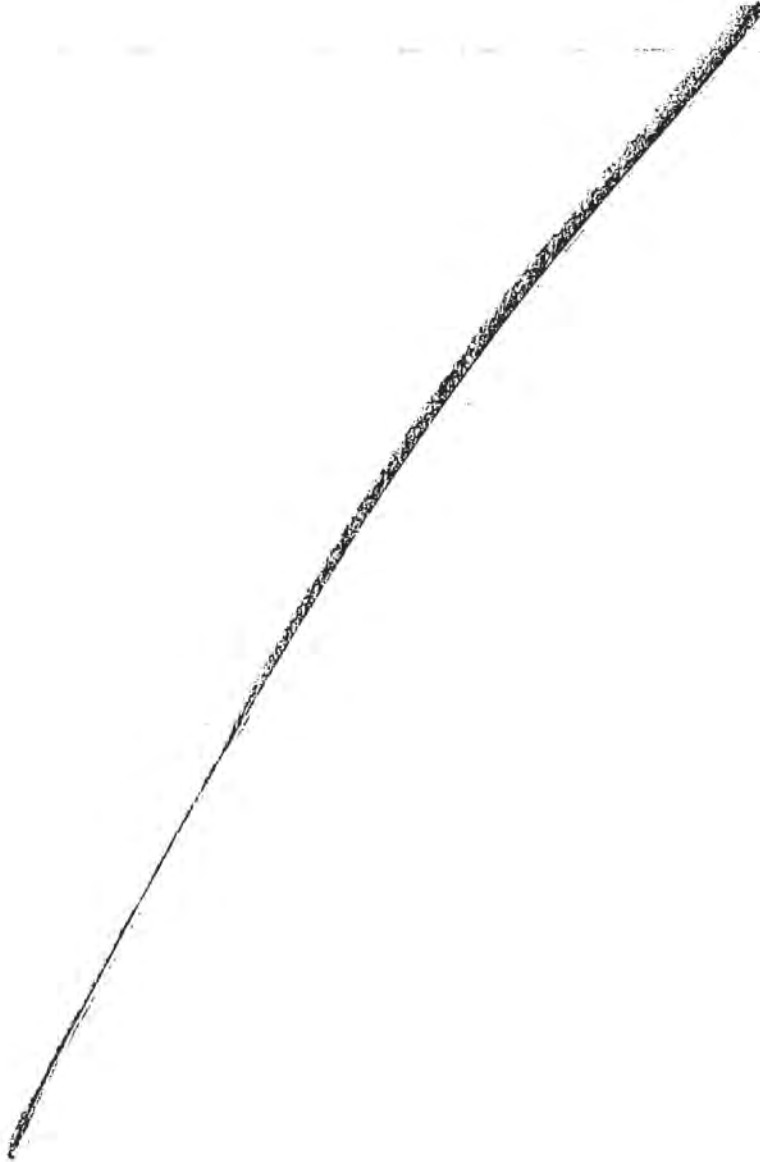
Exhibit A

LEGAL DESCRIPTION OF THE WEST SIDE YARDS



Exhibit A-1

LEGAL DESCRIPTION OF THE ERY PARCEL



Legal Description of Yards Parcel

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the westerly line of Tenth Avenue (100' R.O.W.); running thence

1. Along said westerly line Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 495.43 feet to a point; thence
2. South $73^{\circ}49'29''$ West, a distance of 41.60 feet to a point; thence
3. South $75^{\circ}34'14''$ West, a distance of 20.66 feet to a point; thence
4. South $80^{\circ}40'55''$ West, a distance of 40.63 feet to a point; thence
5. North $89^{\circ}52'13''$ West, a distance of 350.99 feet to a point; thence
6. North $89^{\circ}14'46''$ West, a distance of 96.54 feet to a point; thence
7. South $82^{\circ}02'38''$ West, a distance of 87.84 feet to a point; thence
8. South $89^{\circ}58'48''$ West, a distance of 165.46 feet to a point on the easterly line of Eleventh Avenue (100' R.O.W.); thence
9. Along said easterly line of Eleventh Avenue, North $00^{\circ}03'07''$ East, a distance of 529.62 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
10. Along said southerly line of West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 416,020 S.F./9.550 acres, more or less.

Exhibit A-2

LEGAL DESCRIPTION OF THE WRY PARCEL



Legal Description of Yards Parcel

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence
2. Along said westerly line of Eleventh Avenue, South $00^{\circ}03'07''$ West, a distance of 538.26 feet to a point; thence
3. North $89^{\circ}49'42''$ West, a distance of 439.40 feet to a point; thence
4. North $69^{\circ}32'56''$ West, a distance of 61.90 feet to a point; thence
5. North $89^{\circ}57'45''$ West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence
6. Along said easterly line of Twelfth Avenue, North $00^{\circ}03'07''$ East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Exhibit A-3

LEGAL DESCRIPTION OF THE ERY YARDS PARCEL



Facility Airspace Parcel: Terra Firma

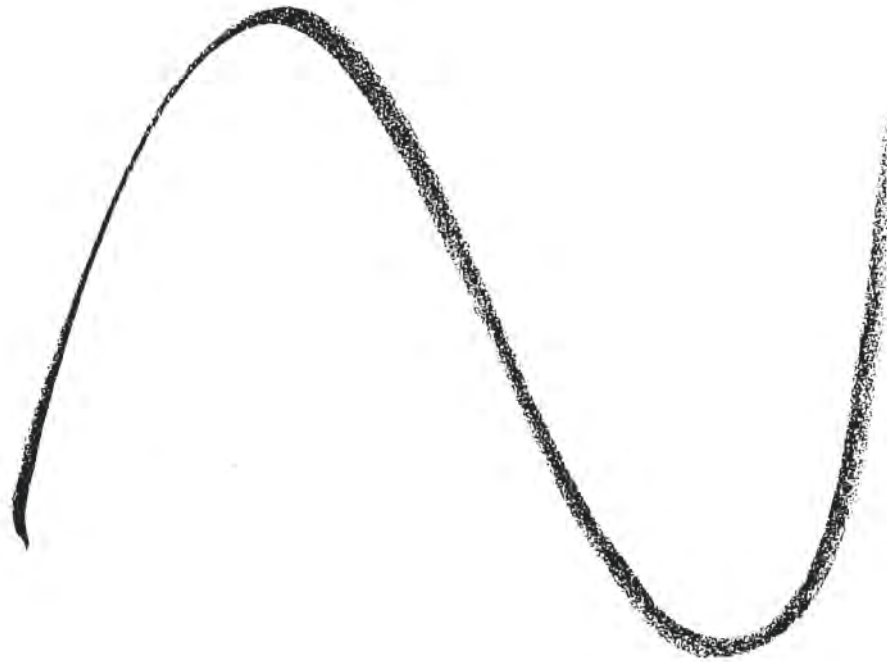
Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North $89^{\circ}56'53''$ West, a distance of 800.00 feet to a point formed by the intersection of the said northerly line of West 30th Street and the easterly line of Eleventh Avenue (100' R.O.W.); thence
2. Along said easterly line of Eleventh Avenue, North $00^{\circ}03'07''$ East, a distance of 182.50 feet to a point; thence
3. Leaving Eleventh Avenue, South $89^{\circ}56'53''$ East, a distance of 120.95 feet to a point; thence
4. North $78^{\circ}45'38''$ East, a distance of 49.37 feet to a point; thence
5. South $89^{\circ}56'53''$ East, a distance of 630.64 feet to a point in the aforementioned westerly line of Tenth Avenue; thence
6. Along said westerly line of Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 152,330 square feet or 3.497 acres, more or less.

Exhibit A-4

LEGAL DESCRIPTION OF THE ERY FACILITY AIRSPACE PARCEL



Legal Description of Facility Airspace Parcel

Facility Airspace Parcel: Airspace

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

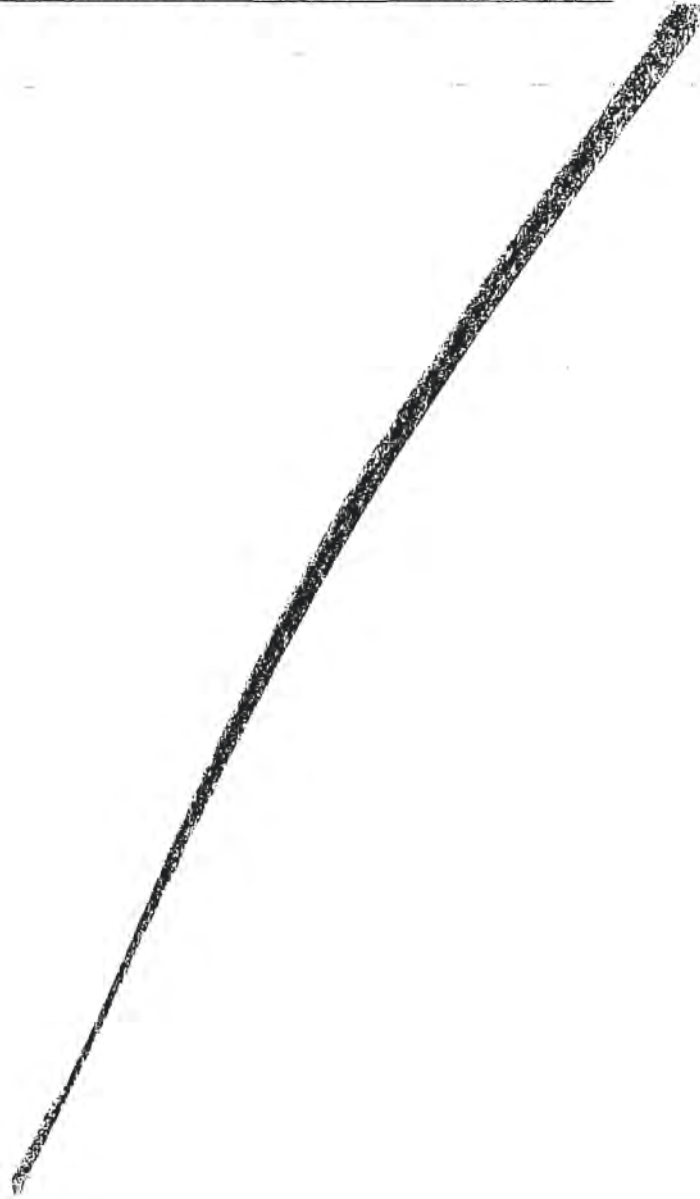
Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the westerly line of Tenth Avenue (100' R.O.W.); running thence

1. Along said westerly line Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 495.43 feet to a point; thence
2. South $73^{\circ}49'29''$ West, a distance of 41.60 feet to a point; thence
3. South $75^{\circ}34'14''$ West, a distance of 20.66 feet to a point; thence
4. South $80^{\circ}40'55''$ West, a distance of 40.63 feet to a point; thence
5. North $89^{\circ}52'13''$ West, a distance of 350.99 feet to a point; thence
6. North $89^{\circ}14'46''$ West, a distance of 96.54 feet to a point; thence
7. South $82^{\circ}02'38''$ West, a distance of 87.84 feet to a point; thence
8. South $89^{\circ}58'48''$ West, a distance of 165.46 feet to a point on the easterly line of Eleventh Avenue (100' R.O.W.); thence
9. Along said easterly line of Eleventh Avenue, North $00^{\circ}03'07''$ East, a distance of 529.62 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
10. Along said southerly line of West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 416,020 S.F./9.550 acres, more or less.

Exhibit A-5

LEGAL DESCRIPTION OF THE WRY YARDS PARCEL



Legal Description of Facility Airspace Parcel Terra Firma

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North $00^{\circ}03'07''$ East, a distance of 196.65 feet to a point; thence
2. South $89^{\circ}57'45''$ East, a distance of 302.58 feet to a point; thence
3. South $69^{\circ}32'56''$ East, a distance of 61.90 feet to a point; thence
4. South $89^{\circ}49'42''$ East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence
5. Along said westerly line of Eleventh Avenue, South $00^{\circ}03'07''$ West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence
6. Along said northerly line of west 30th Street, North $89^{\circ}56'53''$ West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

Exhibit A-6

LEGAL DESCRIPTION OF THE WRY FACILITY AIRSPACE PARCEL



Facility Airspace Parcel: Airspace Above Lower Limiting Plane

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South $00^{\circ}03'07''$ West, a distance of 538.26 feet to a point; thence

3. North $89^{\circ}49'42''$ West, a distance of 439.40 feet to a point; thence

4. North $69^{\circ}32'56''$ West, a distance of 61.90 feet to a point; thence

5. North $89^{\circ}57'45''$ West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North $00^{\circ}03'07''$ East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Exhibit A-7

LEGAL DESCRIPTION OF THE TOWER C LEASE PREMISES

Basement level and below:

All of the lands at or below an upper limiting plane of elevation 12.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 589.42 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 77.67 feet to a point; thence
3. North 89°56'53" West, a distance of 112.00 feet to a point; thence
4. North 00°03'07" East, a distance of 104.83 feet to a point; thence
5. South 89°56'53" East, a distance of 22.37 feet to a point; thence
6. North 78°45'38" East, a distance of 49.37 feet to a point; thence
7. South 89°56'53" East, a distance of 630.64 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
8. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 125,640 Square Feet/2.884 acres, more or less.

Street Level:

All of the lands above a lower limiting plane of elevation 12.00 feet and at or below an upper limiting plane of elevation 29.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 579.42 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 20.06 feet to a point; thence
3. South 89°56'53" East, a distance of 8.37 feet to a point; thence
4. North 00°03'07" East, a distance of 30.67 feet to a point; thence

5. North 89°56'53" West, a distance of 1.80 feet to a point; thence
6. North 00°03'07" East, a distance of 5.03 feet to a point; thence
7. North 89°56'53" West, a distance of 0.50 feet to a point; thence
8. North 00°03'07" East, a distance of 6.60 feet to a point; thence
9. South 89°56'53" East, a distance of 2.33 feet to a point; thence
10. North 00°03'07" East, a distance of 18.31 feet to a point; thence
11. North 36°42'17" West, a distance of 27.85 feet to a point; thence
12. North 89°56'53" West, a distance of 10.32 feet to a point; thence
13. North 00°03'07" East, a distance of 31.86 feet to a point; thence
14. North 89°56'53" West, a distance of 45.42 feet to a point; thence
15. North 00°03'07" East, a distance of 12.90 feet to a point; thence
16. North 89°56'53" West, a distance of 37.04 feet to a point; thence
17. North 00°03'07" East, a distance of 34.75 feet to a point; thence
18. South 89°56'53" East, a distance of 1.41 feet to a point; thence
19. North 78°45'38" East, a distance of 49.37 feet to a point; thence
20. South 89°56'53" East, a distance of 630.64 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
21. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 116,517 Square Feet/2.675 acres, more or less.

Mezzanine Level:

All of the lands above a lower limiting plane of elevation 29.00 feet and at or below an upper limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 579.42

feet to a point; thence

2. Leaving West 30th Street, North 00°03'07" East, a distance of 20.06 feet to a point; thence
3. South 89°56'53" East, a distance of 8.37 feet to a point; thence
4. North 00°03'07" East, a distance of 35.70 feet to a point; thence
5. South 89°56'53" East, a distance of 3.21 feet to a point; thence
6. North 00°03'07" East, a distance of 136.41 feet to a point; thence
7. South 89°56'53" East, a distance of 567.83 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
8. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 109,465 Square Feet/2.513 acres, more or less.

Plaza level and above:

All of the lands above a lower limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 416.00 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 192.17 feet to a point; thence
3. South 89°56'53" East, a distance of 416.00 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
4. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 79,941 Square Feet/1.835 acres, more or less.

Exhibit B

SOURCES OF THE ORIGINAL HIGH LINE EASEMENT

501-57 West 30th St.

Block 702 Lot 50

Easement Source: Deed from The Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Eastern Starr Associates, dated January 30, 1981, and recorded February 6, 1981, in Reel 554 Page 324, as corrected by Correction Deed from Grantor to Eastern Starr Associates dated March 2, 1983, and recorded March 24, 1983 in Reel 674, Page 1917

(No Street Address): South side

Block 702 Lot 1

32nd St. Between 10th and 11th Aves.

Easement Source: Deed from The Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Triborough Bridge and Tunnel Authority ("TBTA") dated December 15, 1980, and recorded December 17, 1980 in Reel 547 Page 1306, as corrected by Correction Deed from Grantor to TBTA dated August 12, 1981 and recorded September 14, 1981 in Reel 582, Page 1102, each as modified by Release of Easements from Consolidated Rail Corporation dated March 26, 1982 and recorded April 21, 1982, in Reel 619, Page 626

320 12th Avenue

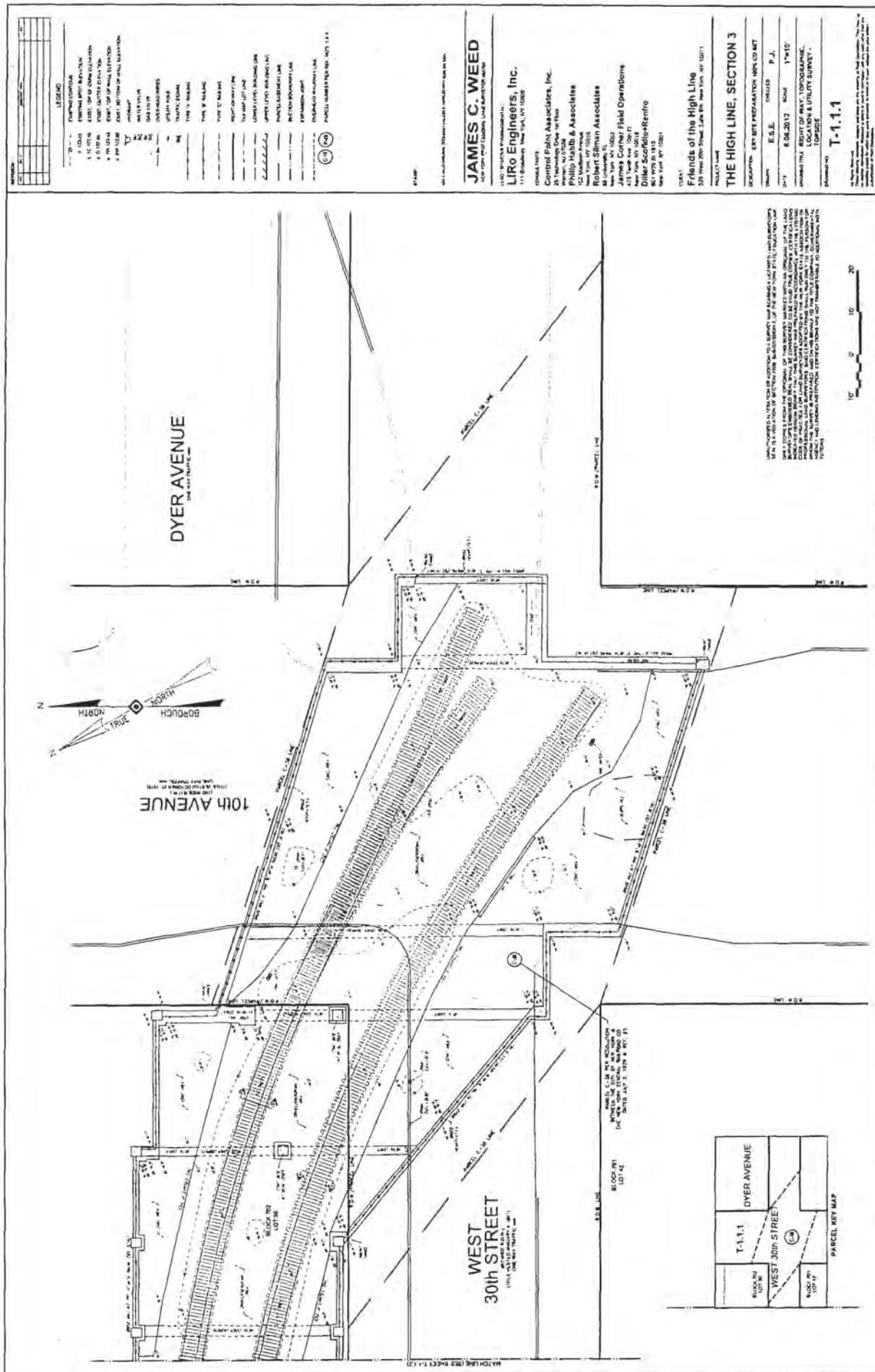
Block 676 Lot 3

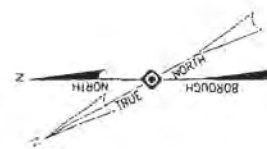
Easement Source: Deed from the Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Triborough Bridge and Tunnel Authority dated December 15, 1980 and recorded December 17, 1980 in Reel 547 Page 1306, as corrected by Correction Deed from Grantor to TBTA dated August 12, 1981 and recorded September 14, 1981 in Reel 582 Page 1102, each as modified by Release of Easements from Consolidated Rail Corporation dated March 26, 1982 and recorded April 21, 1982 in Reel 619, Page 626

Exhibit C

LEGAL DESCRIPTION OF THE HIGH LINE EASEMENT AREA







with the addition of 10% (v/v) methylcellulose (K100, KJ Somvi Chemicals Pvt. Ltd., Mumbai, India) and 0.5% (w/v) Tween-80 (SRL, Mumbai, India) and stirred for 24 h. The emulsion was then stirred for 24 h at 4°C. The emulsion was then stirred for 24 h at 4°C. The emulsion was then stirred for 24 h at 4°C.

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JAMES C. WEED

LIRO Engineers, Inc.

Control Point Associates, Inc.

Philip Webb & Associates

Robert Silman Associate

James Corner Field Operations

175 Seventh Ave., 12th Fl.
New York, NY 10018
Diller Scofidio+Renfro

© 1999 NY NY 10013
New York NY 10013

Friends of the High Line

PROPERTY NAME

THE HIGH LINE, SECTION 3

ACQUISITION

Author	E.S.E.	(mls)	P.J.
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DATE	6.06.2012	SCALE	1"=10"
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LOCATION & UTILITY SURVEY -
TONGUE

T-1.1.1.5

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

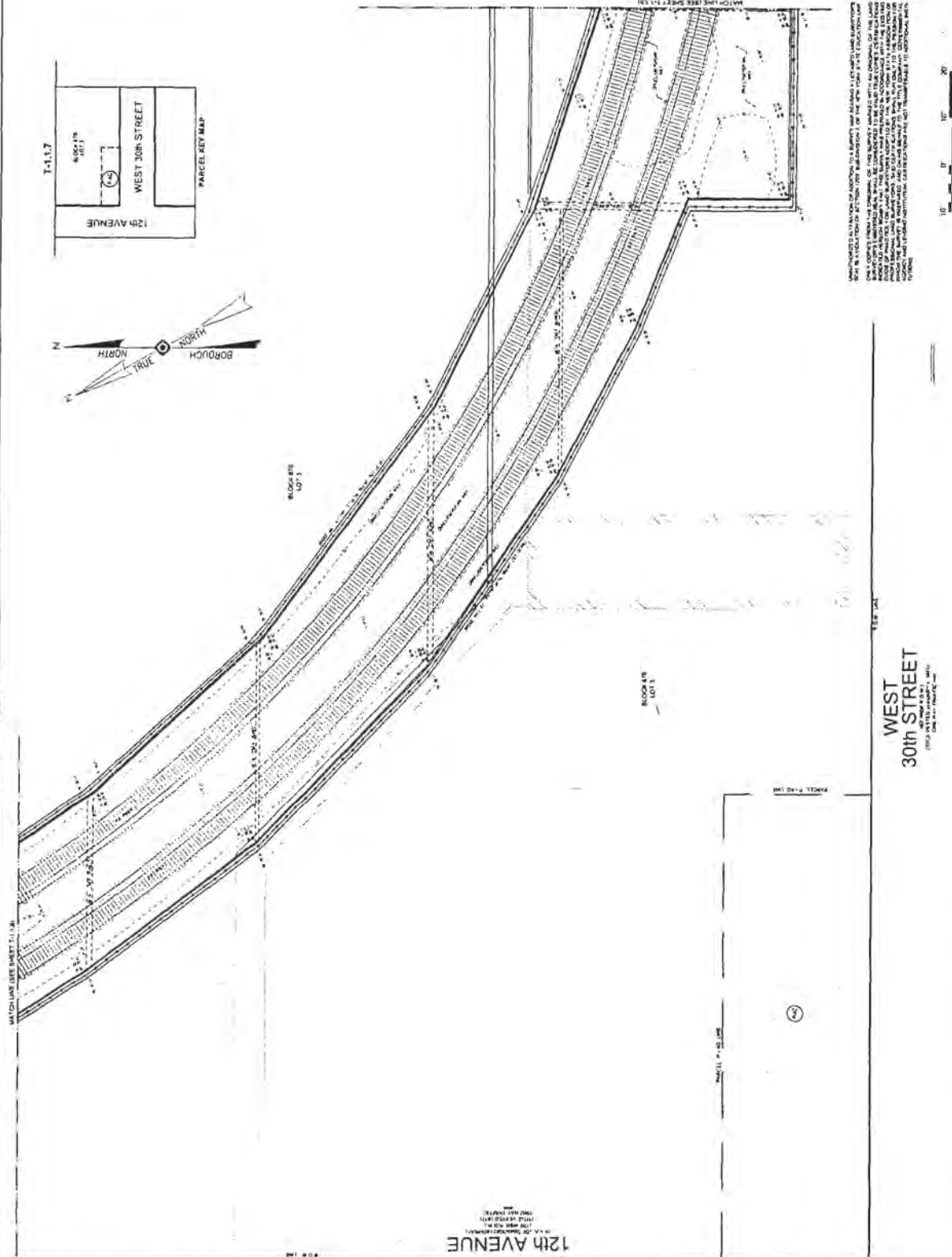
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Exhibit D

WSY Highline Agreement – Insurance Requirements (MTA RIM Revised 11/16/10)

1. The City of New York or its Property Manager shall procure at its sole cost and expense and shall maintain in force at all times during the term of this Agreement, policies of insurance in accordance with the terms set forth below:

Commercial General Liability Insurance (I.S.O. 2001 Form or equivalent approved by LIRR and MTA with limits of liability in the amount of at least \$10,000,000 each occurrence/\$10,000,000 General Aggregate Limit (other than products-completed operations)/\$10,000,000 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any LIRR or MTA policy available.

Such policy should be written on an occurrence form, and shall include:

- Contractual coverage for liability assumed under this agreement;
- Personal and Advertising Injury Coverage;
- Products-Completed Operations
- Independent Contractors Coverage;
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be removed in this respect; and
- Additional Insured Endorsement (I.S.O. Form CG 20 10 1185 version or equivalent approved by the LIRR and MTA naming:
 - Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates, National

Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc.

Self Insurance: Notwithstanding the foregoing, for as long as the City of New York is the Easement Holder, Easement Holder may act as a self-insurer. The City of New York's option to self-insure does not extend to any contractor the City of New York may hire for the work to be performed under this Agreement. The City of New York's contractors must adhere to all the insurance provisions set forth herein. The City of New York further agrees that its decision to self-insure shall in no way limit the defenses or indemnification available to LIRR and MTA.

2. **During any Easement Holder Work, the following insurance must be submitted and approved by LIRR and MTA prior to the start of any work, and shall be maintained for the duration of any and all project(s):**

Except that as otherwise provided in this Easement, the general contractor, construction manager or contractor, as the case may be (in either case, the "Easement Holder's Contractor"), shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Agreement, through the final completion of the applicable contract, policies of insurance as herein below set forth, written by companies with an A.M. Best Company rating of A-/ "VII" or better, and approved by the LIRR and MTA and shall deliver evidence of such policies. These policies must: (i) be written in accordance with the requirements of the paragraphs below, as applicable; (ii) be endorsed in form acceptable to include a provision that the policy will not be canceled, materially changed, or not renewed, unless at least thirty (30) days prior written notice to the LIRR and MTA c/o MTA Risk and Insurance Management Department - Standards, Enforcement & Claims Unit, 2 Broadway – 21st floor, New York, NY 10004, (iii) state or be endorsed to provide that the coverage afforded under the Easement Holder's Contractor's policies shall apply on a primary and not on an excess or contributing basis with any policies which may be available to the LIRR and MTA, and also that the Easement Holder's Contractor's policies, primary and excess, must be exhausted before implicating any LIRR or MTA policy available, and (iv) state or be endorsed to provide that, if a subcontractor's policy contains any provision that may adversely affect whether Easement Holder's Contractor's policies are primary and must be exhausted before implicating any LIRR or MTA policy available, Easement Holder's Contractor's and subcontractor's policies shall nevertheless be primary and must be exhausted before implicating any LIRR or MTA policy available. Except for Professional Liability, policies written on claims made basis are not acceptable. At least two (2) weeks prior to the expiration of the policies, Easement Holder's Contractor shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies. Except as otherwise indicated in the detailed coverage paragraphs below, self insured retentions and policy deductibles shall not exceed \$500,000, unless such increased deductible or retention is approved by LIRR and MTA. The Easement Holder's Contractor shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss. The insurance monetary limits

required herein may be met through the combined use of the insured's primary and umbrella/excess policies.

- A. **Workers' Compensation Insurance** (including Employer's Liability Insurance with limits of not less than \$2,000,000 for Easement Holder Work involving structural construction or reconstruction, and \$500,000 for other construction (i.e., trade work) repairs, maintenance and inspection, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of New York State.
- B. **Commercial General Liability Insurance** (I.S.O. 2001 Form or equivalent approved by LIRR) in the Easement Holder's Contractor's name with limits of liability in the amount of at least, in the case of Easement Holder Work involving structural construction or reconstruction, \$10,000,000 each occurrence/\$10,000,000 General Aggregate Limit (other than products-completed operations)/\$10,000,000 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. For other construction work (i.e., trade work), the above limits shall be \$3,000,000, and for repairs, maintenance and inspections, the above limits shall be \$1,000,000. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any LIRR or MTA policy available.

Such policy should be written on an occurrence form, and shall include:

- Contractual coverage for liability assumed under this agreement;
- Personal and Advertising Injury Coverage;
- Products-Completed Operations;
- Independent Contractors Coverage;
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be removed in this respect; and;
- Additional Insured Endorsement I.S.O. Form CG 20 10 1185 or CG 20 26 and CG 20 37 7/04 version or its equivalent may be utilized naming:

- Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc.

C. Business Automobile Liability Insurance (I.S.O. Form CA 00 01 10 01) or equivalent approved by the Authority) in the Easement Holder's Contractor's name with limits of liability of at least \$2,000,000 for construction work (\$1,000,000 for maintenance, repair and inspection work) each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle. The policy shall be extended to include employees of any insured acting in the scope of their employment.

- If the project involves transporting and/or disposing of any hazardous material or waste off of the jobsite, the Easement Holder's Contractor or any subcontractor performing such work must add the MCS-90 to the automobile policy.
- The CA9948 03/06 endorsement or equivalent is also required if transporting hazardous material to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. **(Additional pollution liability insurances maybe required, which are identified in below paragraphs.)**
- The policy limits of liability must be increased to at least \$5,000,000 each occurrence pursuant to federal, state or local laws, rules and regulations, and
- Copies of all required endorsements shall be provided, for review as part of the insurance submission.

D. **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form approved by the MTA), covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured's own property and conforming to the following:

- The following are the "Named Insureds" for this coverage:
- Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc.

- The limit of liability shall be at least \$5,000,000 each occurrence for Easement Holder Work involving structural construction or reconstruction, \$3,000,000 for other construction (i.e., trade work) and \$1,000,000 for repair, maintenance and inspection, subject to a \$10,000,000 annual aggregate for Easement Holder Work involving structural construction or reconstruction, \$5,000,000 for other construction (i.e., trade work), and \$2,000,000 for repair, maintenance and inspection;
- Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer's Liability Act (FELA).
- Indicate the name and address of the contractor to perform the work, the description of work, and location.
- Evidence of Railroad Protective Liability Insurance, must be provided in the form of the Original Policy. A detailed **Insurance Binder (ACORD or Manuscript Form)** will be accepted pending issuance of the Original Policy, which must be provided within 30 days of the Binder Approval.

E. **Professional Liability Insurance** including, in the case of a contract involving environmentally regulated substances or hazardous material exposure(s), Pollution Liability covering actual or alleged negligent acts, errors or omissions committed by the consultant in the performance of activities under this Agreement, regardless of the type of damages. The policy coverage shall also extend to include personal injury, bodily injury and property damage from the performance of professional service and/or arising out of the work. The policy shall have a limit of liability of not less than five million dollars \$5,000,000 per claim. The policy may contain a deductible clause of a maximum of five hundred thousand dollars \$500,000 unless such increased deductible is approved by LIRR and MTA. But in such case the deductible is the sole responsibility of Consultant and no portion of such deductible is the responsibility of the LIRR and MTA. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.

If this insurance is provided on a claims-made basis, the Consultant shall maintain continuous insurance coverage during the term of this Agreement and in addition to the coverage requirements above, such policy shall provide that:

- i. Policy retroactive date coincides with or precedes the insureds' initial services under the Agreement and shall continue until the

termination of the Agreement (including subsequent policies purchased as renewals or replacements);

- ii. Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- iii. An extended Reporting Period of at least one year will be available and must be purchased in the event ongoing coverage is not maintained.
- iv. Consultant shall provide pollution liability coverage as part of its Professional Liability Insurance Policy.

F. **Easement Holder's Contractor's Pollution Liability** - In the case of a contract involving environmentally regulated substances or hazardous material exposure(s), the Easement Holder's Contractor shall provide Contractor's Pollution Liability Insurance with respect to the work and activities of the Easement Holder's Contractor or its Subcontractors, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall have limits of liability specifically written for this contract in the amount of at least \$3,000,000. The Easement Holder's Contractor shall comply with all federal, state, and/or local laws, rules and regulations and shall obtain any additional coverages required by federal, state, or local government agencies. The Easement Holder's Contractor's Pollution Liability Insurance shall be in effect from the time the MTA/LIRR permits the work relating to the Hazardous Substances or other environmentally regulated substances and materials to begin through the completion of the work.

- i. This insurance shall name the following entities as additional insured's: LIRR and MTA including its subsidiaries and affiliates.
- ii. This insurance may be supplied by the subcontractor performing the Parcel Owner Work, if the Easement Holder's Contractor is not performing any of the relevant Parcel Owner Work and providing all applicable additional insureds are named.
- iii. The Easement Holder's Contractor or its sub-contractor performing the Parcel Owner Work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Project Engineer. The insurance shall be submitted to MTA Risk and Insurance Management Department pursuant to requirements referenced in the Insurance Article.
- iv. In the event that the Easement Holder's Contractor or its subcontractors transports from the Site hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the **MCS-90 Endorsements**

shall be attached to the auto liability policy. The CA9948 03/06 endorsement or equivalent is also required if transporting to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. Both shall be furnished on a primary basis with limits of liability of at least \$3,000,000 per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. **A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the \$3,000,000 limits.**

- v. Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the work should be provided to the MTA/LIRR.

G. Pollution Legal Liability (Non-Owned Disposal Site Coverage) - If the project activities include the disposal of waste or other hazardous substance from the work site, the Easement Holder's Contractor shall maintain or cause to be maintained pollution legal liability with limits of liability of at least \$3,000,000 per occurrence naming the following as additional insureds, with a copy of said endorsement submitted to the LIRR and Metropolitan Transportation Authority.

Additionally, coverage shall be maintained in one of the following ways:

- i. A stand-alone policy;
- ii. If coverage is not provided under a stand alone policy, but is included in either an Environmental Package policy and/or a Contractors Pollution Liability policy, a Non-Owned Disposal Site endorsement may be provided listing the indemnitees referenced above as additional insureds, or;
- iii. The contractor may also designate the disposal site, and provide a certificate of insurance from the disposal facility naming the above referenced indemnitees as additional insureds.

- G. (Intentionally left blank)

H. The City of New York and or the Easement Holder's Contractor (s) shall furnish evidence of all policies before any work is started to LIRR and MTA:

C/o MTA Risk & Insurance Management
Standards Enforcement & Claims Unit
2 Broadway – 21st Floor
New York, NY 10004

Except for Railroad Protective Liability or Builder's Risk insurance, certificates of Insurance may be supplied as evidence of such aforementioned policies, unless otherwise noted herein. However, if requested by the Agency, the Easement Holder's Contractor shall deliver to the Agency within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (1) be provided on the LIRR Certificate of Insurance Form (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (3) disclose any deductible, sub-limit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds Additional Named Insureds and/or Named Insureds as required herein. The Easement Holder's Contractor must provide a physical copy of the Additional Insured Endorsement (I.S.O. Form CG 20 10 1185 or CG 20 26 and CG 20 37 07/04 version or its equivalent, as applicable) and the endorsement(s) must include policy number(s); (5) reference the location and description of work on the face of the certificate; and (6) expressly reference the inclusion of all required endorsements.

Nothing herein contained shall be deemed to limit the Easement Holder's Contractor's liability to the limits of liability, or coverage of Policies listed above, their renewals, or replacement.

If, at any time during the period of this Contract, insurance as required is not in effect, or proof thereof is not provided to the LIRR and MTA, the LIRR and MTA shall have the option to direct the Easement Holder to suspend work.

3. **Notice of Claims**. Easement Holder shall not knowingly violate or knowingly permit to be violated any of the conditions or provisions of any policy of insurance required to be maintained hereunder, and shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies. Easement Holder shall provide written notice to the Parcel Owners promptly after Easement Holder becomes aware of any claim or proceeding that has been filed against it if such claim or proceeding involves any actual or alleged serious personal injury or death or any other claim that presents an unusual exposure to coverage, including without limitation (i) cord injury (including without limitation paraplegia or quadriplegia), (ii) amputations requiring a prosthesis, (iii) brain damage affecting mentality or the central nervous system (including without limitation permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak, hemiplegia or unconsciousness), (iv) blindness, (v) third-degree burns involving over ten percent (10%) of the body or second-degree burns involving over thirty percent (30%) of the body, (vi) multiple fractures (involving more than one member or non-union), (vii) fracture of both heel bones, (viii) nerve damage causing paralysis and loss of sensation in an arm and hand, (ix) massive internal injuries affecting body organs, (x) injury to a nerve at the base

of the spinal canal or any other back injury resulting in incontinence of bowel and/or bladder, or (xi) fatalities.

4. The Easement Holder waives all rights against Parcel Owners, including their directors, officers, officials and employees, for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to Easement Holder Work.

EXHIBIT E

INSURANCE FOR PARCEL OWNER WORK

Section 1.01 Parcel Owner's Obligation to Insure

A. From the commencement of any Parcel Owner Work until its completion, the Parcel Owner shall ensure that the types of insurance indicated in this Exhibit are obtained and remain in force, and that such insurance adheres to all requirements herein.

B. The Parcel Owner is authorized to undertake Parcel Owner Work under this Agreement only during the effective period of all required coverage.

Section 1.02 Parcel Owner's Right to Self-Insure

A. Notwithstanding anything contained in this Agreement, for as long as MTA is a Parcel Owner, MTA may act as a self-insurer with respect to Parcel Owner Work conducted on Parcels owned by MTA. The MTA's option to self-insure does not extend to any contractor the MTA may hire for the work to be performed under this Agreement. The MTA's contractors must adhere to all the insurance provisions set forth herein. The MTA further agrees that its decision to self-insure shall in no way limit the defenses or indemnification available to LIRR and MTA.

Section 1.03 Commercial General Liability Insurance

During any Parcel Holder Work, the following insurance must be submitted and approved by the Easement Holder prior to the start of any such Parcel Holder Work, and shall be maintained for the duration of any and all project(s), and except that as otherwise provided in this Easement, the general contractor, construction manager or contractor, as the case may be (in any case, the "Parcel Owner's Contractor"), shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Agreement, through the final completion of the applicable contract, policies of insurance as herein below set forth.

A. The Parcel Owner or the Parcel Owner's Contractor shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for Parcel Owner Work that is limited to inspections, maintenance, repairs and minor installations (such as conduit), and Five Million Dollars (\$5,000,000) for other work, such as construction, renovations or alterations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Viaduct and the Parcels and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000) in the case of inspections, repairs and minor installations, and Ten Million Dollars (\$10,000,000) for other work, such as construction, renovations or alterations. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Easement. Coverage shall be at least as broad as that provided by

the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner of Insurance, and shall be "occurrence" based rather than "claims-made." Policies providing such insurance may not include any endorsements excluding coverage relating to the emission of asbestos, lead, mold, or pollutants.

B. Such Commercial General Liability insurance shall name the Easement Holder (The City of New York), and any entity which the City may designate that is providing maintenance or other management services for the Viaduct, together with their directors, officers, officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 2026.

Section 1.04 Workers' Compensation, Employers Liability, and Disability Benefits Insurance

The Parcel Owner or the Parcel Owner's Contractor shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Parcel Owner Work, and such insurance shall comply with the laws of the State of New York.

Section 1.05 Business Automobile Liability Insurance

A. With regard to all operations under this License, the Parcel Owner or the Parcel Owner's Contractor shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 1.06 Property Insurance

A. For any Parcel Owner Work involving construction, alterations, renovation or other work other than merely inspections, maintenance, repairs and minor installations, the Parcel Owner or the Parcel Owner's Contractor shall maintain comprehensive "All Risk" or "Special Perils" form property insurance covering the segment of the Viaduct, as reasonably determined by Easement Holder (the "Insured Segment"), upon or through which the Parcel Owner Work is taking place. Such insurance shall provide full Replacement Cost coverage for the Insured Segment (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water, flood, subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Parcel Owner as Named Insured and the City as Loss Payee as their interests may appear.

B. The limit of such property insurance shall be no less than the full Replacement Cost of all Insured Segments, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an "all risk" or "special perils form" insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Insured Segment.

C. In the event of any loss to any of the Insured Segment, the Parcel Owner or the Parcel Owner's Contractor shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide Easement Holder with a copy of such notice. The Parcel Owner or the Parcel Owner's Contractor shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide Easement Holder with the maximum possible payment for the loss, and (ii) either provide Easement Holder with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Easement Holder's discretion, allow the City itself to adjust such claim.

Section 1.07 Pollution Insurance

A. Pollution Legal Liability Insurance.

1. The Parcel Owner or the Parcel Owner's Contractor shall maintain Pollution Legal Liability Insurance covering bodily injury, property damage, clean-up costs/remediation expenses and legal defense costs for new pollution conditions both on and off-site. If the Parcel Owner's operations include loading, unloading or transportation of any waste or hazardous materials to or from the Viaduct or a Parcel, this insurance shall expressly include such activities and any non-owned facilities/sites utilized for the disposal of wastes or hazardous materials transported from the Viaduct or a Parcel. If a Parcel upon which any excavation, borings or other ground disturbance is to take place contains any underground storage tank(s), this insurance shall expressly include such tanks.

2. This insurance shall have a limit of at least Three Million Dollars (\$3,000,000), and provide coverage for Easement Holder (The City of New York), and any entity which the City may designate that is providing maintenance or other management services for the Viaduct, together with their directors, officers, officials and employees, as Additional Insureds. Coverage for the City shall be at least as broad as the Parcel Owner's. This insurance shall have a retroactive date on or before the commencement of the Parcel Owner Work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the completion of the Parcel Owner Work.

B. Contractors Pollution Liability Insurance.

1. In the event the Parcel Owner or the Parcel Owner's Contractor enters into a contract with another that involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other hazardous materials or substances, the Parcel Owner shall maintain, or cause the Parcel Owner Contractor to maintain, Contractors Pollution

Liability Insurance covering bodily injury, property damage, clean up costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor's operations at the Premises.

2. If required, the Contractors Pollution Liability Insurance shall each have a limit of at least Two Million Dollars (\$2,000,000) and provide coverage for the Parcel Owner as Named Insured or Additional Insured and the City, together with their directors, officers, officials and employees, as Additional Insured. Coverage for the City shall be at least as broad as the Parcel Owner's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

Section 1.08 General Requirements for Insurance Coverage and Policies

A. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from Easement Holder.

B. Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by Easement Holder.

C. Except as provided in Section 1.02 A above, there shall be no self-insurance program with regard to any insurance required under this Exhibit unless approved in writing by Easement Holder. The Parcel Owner shall ensure that any such self-insurance program provides Easement Holder with all rights that would be provided by traditional insurance under this Exhibit, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

D. All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the Easement Holder with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Easement Holder and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007, or to such other address in lieu thereof of which Easement Holder may notify Parcel Owner. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

Section 1.09 Proof of Insurance

A. Certificates of Insurance for all insurance required in this Exhibit E must be submitted to and accepted by the Easement Holder prior to the commencement of Parcel Owner Work.

B. For Workers' Compensation, Employers Liability Insurance and Disability Benefits insurance, the Parcel Owner or the Parcel Owner's Contractor shall submit one of the following:

1. C-105.2 Certificate of Worker's Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

C. For all insurance required under this Exhibit other than Workers Compensation, Employers Liability, and Disability Benefits insurance, the Parcel Owner or the Parcel Owner's Contractor shall submit one or more Certificates of Insurance in a form acceptable to the Easement Holder. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Parcel Owner's or Parcel Owner's Contractor's policy/ies (including its general liability policy) by which the Easement Holder and any entity which the City may designate that is providing maintenance or other management services for the Viaduct has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by Easement Holder or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

D. Certificates of Insurance confirming renewals of insurance shall be submitted to the Easement Holder prior to the expiration date of coverage of all policies required under the Easement. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

E. Acceptance or approval by the Easement Holder of a Certificate of Insurance or any other matter does not waive Parcel Owner's obligation to ensure that

insurance fully consistent with the requirements of this Exhibit is secured and maintained, nor does it waive Parcel Owner's liability for its failure to do so.

F. The Parcel Owner or the Parcel Owner's Contractor shall be obligated to provide Easement Holder with a copy of any policy of insurance required under this Exhibit upon request by the Easement Holder.

Section 1.10 Miscellaneous

A. The Parcel Owner or the Parcel Owner's Contractor may satisfy its insurance obligations under this Exhibit through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

B. The Parcel Owner or the Parcel Owner's Contractor shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not Easement Holder is an insured under the policy.

C. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Exhibit, the Parcel Owner or Parcel Owner's Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any Parcel Owner Work (including notice to Commercial General Liability insurance carriers for events relating to the Parcel Owner's or Parcel Owner's Contractor's own employees) no later than 20 days after such event. For any policy where Easement Holder is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Parcel Owner or Parcel Owner's Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007, or such other address in lieu thereof of which Easement Holder may notify Parcel Owner.

D. The failure of the Parcel Owner or the Parcel Owner's Contractor to secure and maintain insurance in complete conformity with this Exhibit, or to give the insurance carrier timely notice on behalf of Easement Holder, or to do anything else required by this Exhibit shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by Easement Holder at any time.

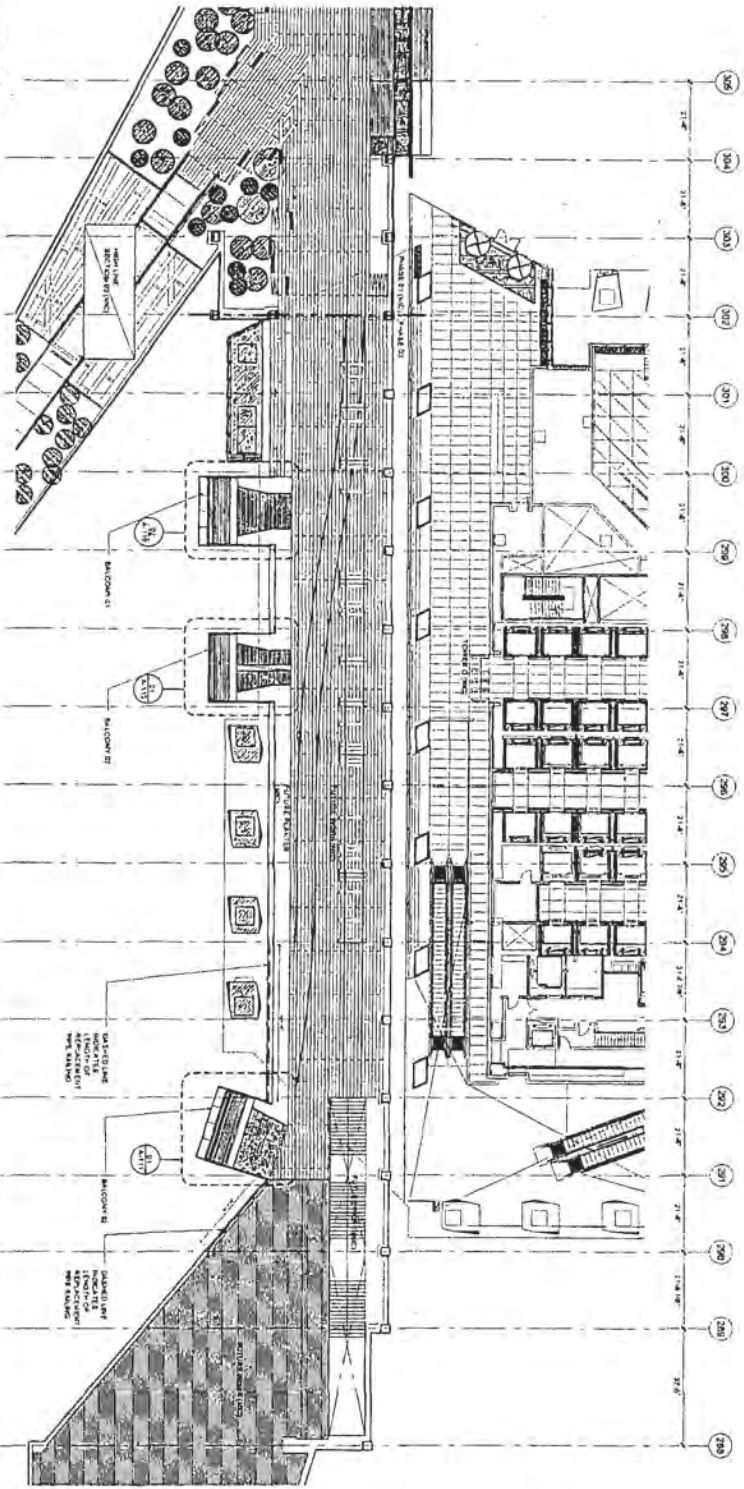
E. Insurance coverage in the minimum amounts provided for in this Exhibit shall not relieve the Parcel Owner of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

F. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Exhibit, the Parcel Owner shall at all times fully cooperate with Easement Holder with regard to such potential or actual claim.

G. The Parcel Owner waives all rights against Easement Holder, including their directors, officers, officials and employees, for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to Parcel Owner Work.

H. In the event the Parcel Owner requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement and requires such entity to name the Parcel Owner as an additional insured under such insurance, the Parcel Owner shall ensure that such entity also name Easement Holder and any entity which the City may designate that is providing maintenance or other management services for the Viaduct, including their directors, officers, officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

I. In the event the Parcel Owner receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Parcel Owner shall immediately forward a copy of such notice to both the Easement Holder and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007, or such other address in lieu thereof of which Easement Holder may notify Parcel Owner. Notwithstanding the foregoing, the Parcel Owner shall ensure that there is no interruption in any of the insurance coverage required under this Article.



NOTE: ALL DIMENSIONS
SHOWN ON THIS PLAN
ARE APPROXIMATE
AND SHOULD BE
CHECKED IN THE
FIELD.

INTERIM REVIEW ONLY
This drawing is for interim review only and is not to be used for construction. It is subject to change without notice.

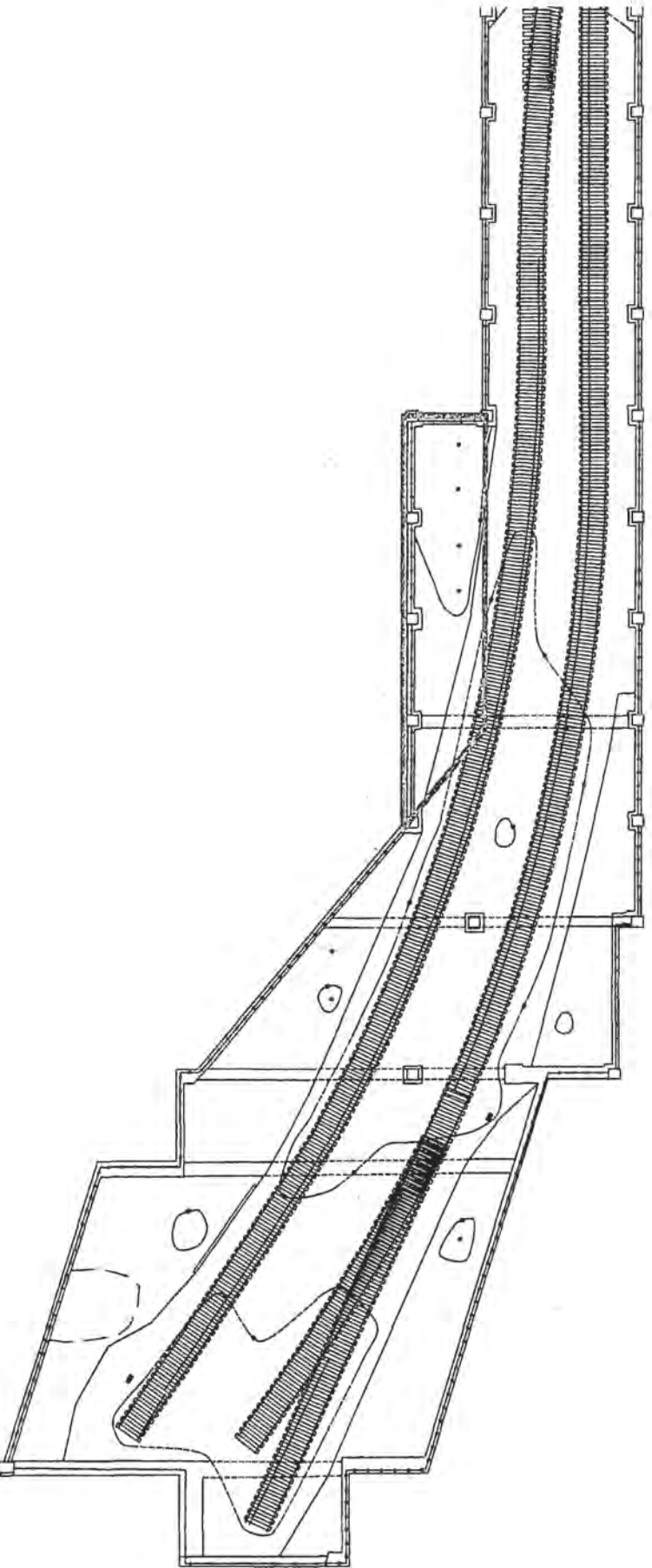
James Corner Field Operations
100 West 25th Street, New York, NY 10018
Studio + Ramo Architects, P.C.
100 West 25th Street, New York, NY 10018
Buro Happold
100 West 25th Street, New York, NY 10018

Client:
NYC Economic Development Corp.
NYC Department of Parks & Recreation
The Friends of the High Line
100 West 25th Street, New York, NY 10018
Project Name:
THE HIGH LINE, SECTION 3
PASSAGE BALCONIES

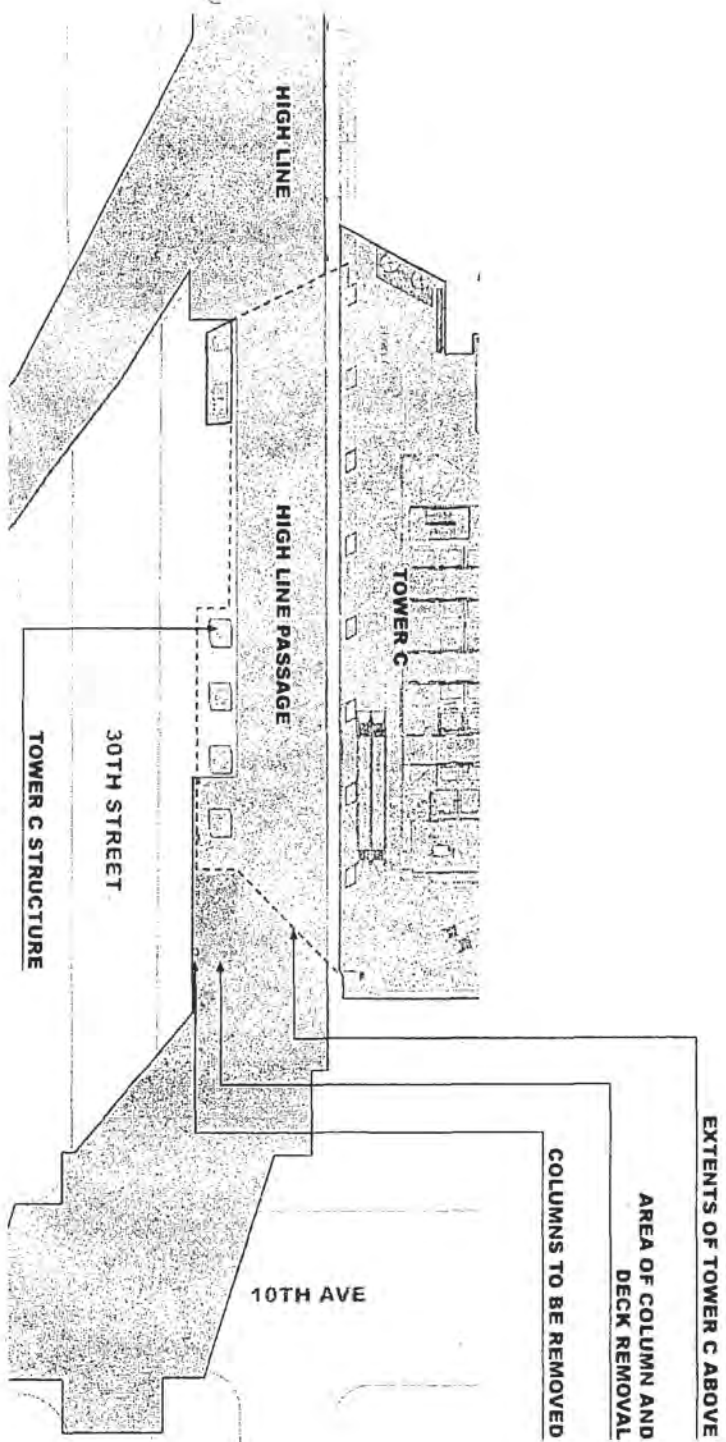
LAYOUT PLAN

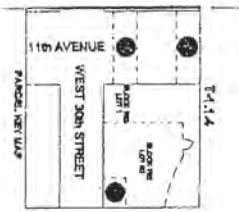
DATE: 03.14.2012
DESIGNED BY: ES
CHECKED BY: MJ
A-100.00
18 OF 31

For Project Information:
This drawing is for interim review only and is not to be used for construction. It is subject to change without notice.



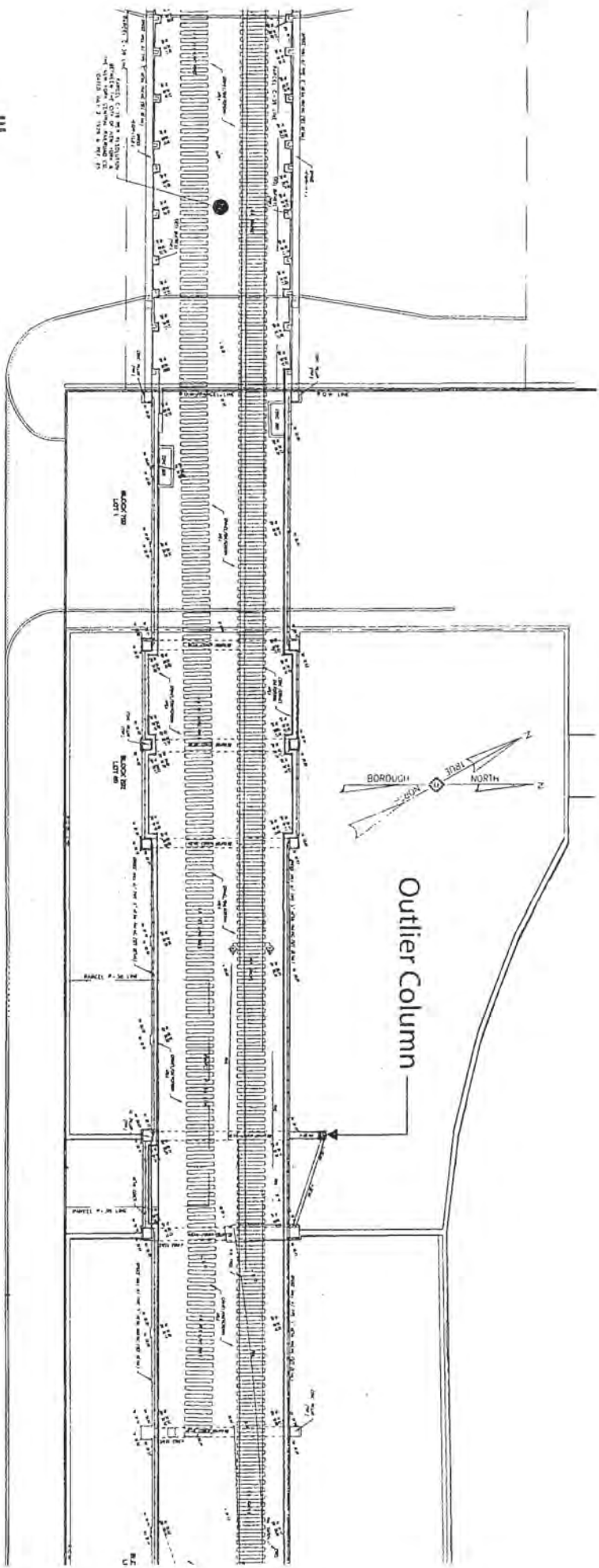
High Line - Section 3
Area of 4 Column Removals





11th AVENUE
CHARTERED 1864
 100' WIDE
 100' DEEP
 100' DEEP
 100' DEEP

WEST
 30th STREET
CHARTERED 1864
 100' WIDE
 100' DEEP
 100' DEEP



**EXECUTED SOLELY TO
ACKNOWLEDGE AND AGREE TO
SECTIONS 13 AND 19 HEREOF:**

LEGACY YARDS TENANT LLC,
a Delaware limited liability company

By:

Name:

Title:

[Signature]
L. Jay Cross
Authorized Signatory

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On the 10 day of April in the year 2013 before me, the undersigned, personally appeared L. Jay Cross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public

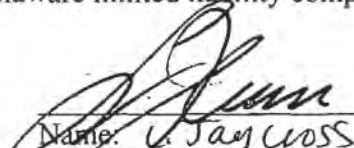
ALLISON EGGLESTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EG6103706
Qualified in Suffolk County
My Commission Expires January 05, 2016

SEAL

**EXECUTED SOLELY TO
ACKNOWLEDGE AND AGREE TO
SECTIONS 13 AND 19 HEREOF:**

WRY TENANT LLC,
a Delaware limited liability company

By:

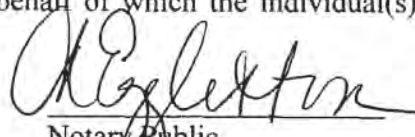

Name: L. Jay Cross
Title: President

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On the 10 day of April in the year 2013 before me, the undersigned, personally appeared L. Jay Cross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

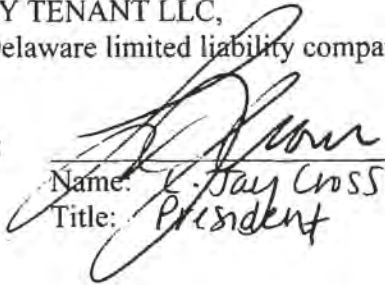
ALLISON EGGLESTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EG6103706
Qualified in Suffolk County
My Commission Expires January 05, 2014

SEAL

**EXECUTED SOLELY TO
ACKNOWLEDGE AND AGREE TO
SECTIONS 13 AND 19 HEREOF:**

ERY TENANT LLC,
a Delaware limited liability company

By:


Name: L. Jay Cross
Title: President

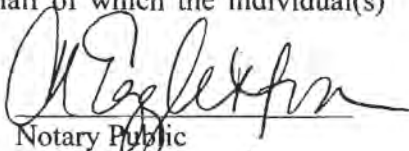
STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On the 10 day of April in the year 2013 before me, the undersigned, personally appeared L. Jay Cross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

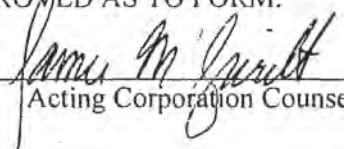
SEAL


Notary Public

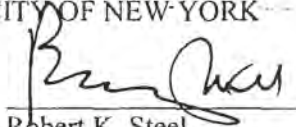
ALLISON EGGLESTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EG6103706
Qualified in Suffolk County
My Commission Expires January 05, 2016

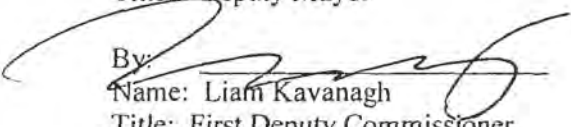
IN WITNESS WHEREOF, and intending to be legally bound hereby, this Agreement has been duly executed by the parties hereto as of the date first above written.

APPROVED AS TO FORM:

By: 
Acting Corporation Counsel

THE CITY OF NEW YORK

By: 
Name: Robert K. Steel
Title: Deputy Mayor

By: 
Name: Liam Kavanagh
Title: First Deputy Commissioner,
Department of Parks & Recreation

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

On the 3 day of April in the year 2013 before me, the undersigned, personally appeared Robert K. Steel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SEAL

Lynne E. Gardner
Notary Public

Lynne E. Gardner
Notary Public, State of New York
NO. 01GA4992059
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires 2-18-14

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

On the 4 day of ~~March~~ ^{April} in the year 2013 before me, the undersigned, personally appeared Liam Kavanagh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SEAL


Alessandro G. Olivieri
Notary Public

SEAL

ALESSANDRO G. OLIVIERI
Notary Public, State of New York
No. 02016001937
Qualified in New York County
Commission Expires 1/26/2014

METROPOLITAN TRANSPORTATION
AUTHORITY

By:


Name: **Jeffrey B. Rosen**
Title: **Director, Real Estate**

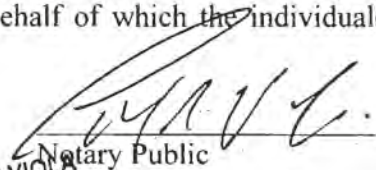
STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)


On the 2nd day of APRIL in the year 2013 before me, the undersigned, personally appeared Jeffrey Rosen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SEAL


Notary Public
CAROL ROTHSTEIN-VIOLA
Notary Public, State of New York
No. 01RO6051364
Qualified in Kings County
Commission Expires Nov. 27, 20 14

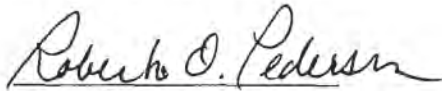
LONG ISLAND RAILROAD COMPANY

By:


Name: Helena E. Williams
Title: President

STATE OF NEW YORK)
 QUEENS ss:
COUNTY OF ~~NEW YORK~~)

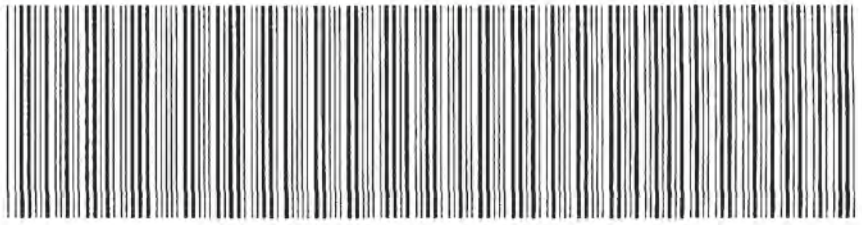
On the 14th day of March in the year 2013 before me, the undersigned, personally appeared Helena E. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

SEAL

ROBERTA O. PEDERSEN
Notary Public, State of New York
No. 02PE4871058
Qualified in Queens County
Commission Expires Aug. 18, 2014

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



2013041500721008002SA1DB

SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2013041500721008
Document Type: EASEMENT

Document Date: 04-10-2013

Preparation Date: 06-14-2013

SUPPORTING DOCUMENTS SUBMITTED:

Page Count

Attachment 1

Appendix L

Rebecca Kriss

From: Allan Zaretsky (DCP) <AZARETSKY@planning.nyc.gov>
Sent: Tuesday, August 10, 2021 10:29 AM
To: Blatnica, Rebecca (Volpe)
Cc: Poole, Andrea (FRA); Stephen Holley; Keri Cibelli; Rebecca Kriss; Osterhues, Marlys (FRA); Ferres, Rebecca (DOS); Michael Marrella (DCP)
Subject: WRP Concurrence Review: Western Railyard Infrastructure Project (WRP #21-087)

Hello,

We have completed the review of the project as described below for consistency with the policies and intent of the New York City Waterfront Revitalization Program (WRP).

Western Railyard Infrastructure Project (DOS #F-2021-0402): FRA is evaluating potential financial assistance for the Western Rail Yard (WYR) Infrastructure Project (Proposed Action), which would consist of a new, approximately 9.8-acre Platform above the MTA's existing rail yard, which is used and operated by Long Island Rail Road (LIRR) as a commuter railroad storage yard and maintenance facility. The yard contains storage tracks for 12-car trains, a car cleaning platform, and other maintenance facilities for LIRR's commuter rail service into Penn Station. The Platform would include building foundations which would keep interruptions of yard operations to a minimum. The construction of the Platform would require the reconstruction and upgrades to approximately 20,000 square feet of railroad staff facilities and other LIRR support services including existing emergency electrical equipment, and rail car cleaning services. The Tunnel Encasement in WYR would extend from Eleventh Avenue to 30th Street. Amtrak estimates the concrete casing extension would be 605 feet long, between 50 and 65 feet wide and between 27 and 38 feet high under the Western Rail Yard. The Tunnel Encasement in WYR would extend from the recently completed encasement under Eleventh Avenue and the Eastern Rail Yard. Together, the encasement below both rail yards (WYR and Eastern Rail Yard) would preserve a total right-of-way of approximately 1,400 feet. No permanent operational components, such as tracks, lighting, ventilation, or electrical system, would be constructed within the Tunnel Encasement as part of the Proposed Action.

Based on the information submitted, the Waterfront Open Space Division, on behalf of the New York City Coastal Commission, having reviewed the waterfront aspect of this action, finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program (WRP) policy and provides its finding to the New York State Department of State (DOS). Please note that the proposed action(s) are subject to consistency review and approval by the New York State Department of State (DOS) in accordance with the New York State Coastal Management Program.

This determination is only applicable to the information received and the current proposal. Any additional information or project modifications would require an independent consistency review.

For your records, this project has been assigned WRP # 21-087. If there are any questions regarding this review, please contact me.

Allan Zaretsky, AICP
Senior Planner | [WATERFRONT & OPEN SPACE DIVISION](#)
Waterfront Revitalization Program Consistency Review

NYC DEPT. OF CITY PLANNING
120 Broadway, 31st Floor • NEW YORK, NY 10271
t 212.720.3448 • azaretsky@planning.nyc.gov

<http://www1.nyc.gov/site/planning/applicants/wrp/wrp.page>

August 10, 2021

Marlys Osterhues
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington DC 20590

Re: F-2021-0402 (DA)
Federal Railroad Administration submission of a
consistency determination - A new 9.8-acre platform above
the MTA's existing rail yard and reconstruction and
upgrades to railroad staff facilities and other LIRR support
services and a 605-foot-long Tunnel Encasement under the
Western Rail Yard.
Concurrence with Consistency Determination

Dear Marlys Osterhues:

The Department of State has completed its review of the Corps' consistency determination regarding the proposed installation of a new 9.8 acre platform in the West Hudson Rail Yard and a tunnel encasement under the Western Rail Yard near the Hudson River, with the New York City Waterfront Revitalization Program.

Based upon the information submitted, the Department of State concurs with the Corps' consistency determination regarding this matter.

Please feel free to contact Rebecca Ferres at (518) 419-7490 or e-mail at: rebecca.ferres@dos.ny.gov and reference file no. F-2021-0402 (DA).

Sincerely,



Gregory L. Capobianco
Office of Planning, Development and
Community Infrastructure

GLC/rf

cc: DEC Region 2
NYC LWRP- Chris Wassif and Allan Zaretsky



**Department
of State**

Attachment 1

Appendix O3



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
5 Post Office Square, Suite 18011
Boston, Massachusetts 02109

July 23, 2021

9043.1
ER 21/0229

Andrea Poole
USDOT Federal Railroad Administration
Environment and Project Engineering Division
1200 New Jersey Ave SE
Washington, DC 20590

**Subject: Draft Environmental Impact Statement and Draft Section 4 (f) Evaluation
Western Rail Yard Infrastructure Project
New York County, New York**

Dear Ms. Poole:

The U.S. Department of the Interior (Department) has reviewed the Draft Environmental Impact Statement and Draft Section 4(f) Evaluation for the Western Rail Yard Infrastructure Project in New York County, New York. The proposed project consists of covering and protecting the active railroad tracks in the Western Rail Yard and preserving a right-of-way through the Western Rail Yard to support the future construction of a trans-Hudson passenger rail crossing into New York Penn Station. The following comments on this project are offered for your consideration.

Section 4(f) Evaluation Comments

The Department concurs with the Federal Railroad Administration (FRA) determination that noise levels at portions of the High Line Park (High Line) during construction activities for the Preferred Alternative and the temporary underpinning of the High Line would be a *de minimis* impact under Section 4(f). Since New York City (NYC) Parks is the official with jurisdiction for the High Line as a park resource, they must concur that the project will not adversely affect the activities, features, or attributes that make the High Line eligible for Section 4(f) protection, before FRA may finalize the *de minimis* impact determination. We understand that FRA is consulting with NYC Parks and have informed them of their intent to find the impacts are *de minimis* under Section 4(f). In addition, we understand that FRA has proposed measures to avoid, minimize, and mitigate harm to the High Line.

The FRA has also determined there will be no adverse effect to any historic properties in the area under Section 106, provided they complete a construction protection plan for the historic

properties in the area, which include the North River Tunnel and the High Line. In a letter dated February 11, 2021, the New York State Historic Preservation Office concurred with the Section 106 finding, and FRA is using this concurrence to support their *de minimis* finding.

The Department encourages FRA to complete their coordination with NYC Parks and provide NYC Parks concurrence with the *de minimis* finding in the final Section 4(f) Evaluation. The Department has no objection to the Section 4(f) approval, provided that a letter from NYC Parks, with their concurrence, be included in the final Section 4(f) Evaluation.

Thank you for the opportunity to review and comment on this project. If you have questions regarding these comments, please contact Mark Eberle, National Park Service, at (215) 597-1258, or mark_eberle@nps.gov. Please contact me at (617) 223-8565 if I can be of further assistance.

Sincerely,

Andrew L. Raddant
Regional Environmental Officer

cc: SHPO-NY (daniel.mackay@parks.ny.gov)



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

July 28, 2021

David Cuff, AICP
Director of Environmental Review
New York City Department of Parks and Recreation
The Arsenal
Central Park
New York, NY 10065

**Re: Western Rail Yard Infrastructure Project, New York, NY
Coordination for Section 4(f) Evaluation**

Dear Mr. Cuff,

This letter is provided as follow up to your letter dated June 18, 2021 and continues the U.S Department of Transportation (USDOT) Federal Railroad Administration's (FRA) coordination with your office regarding the Section 4(f) evaluation for the Western Rail Yard Infrastructure Project (Project). The Project Sponsor, a joint venture between WRY Tenant LLC (an affiliate of The Related Companies, LP (Related)) and the National Railroad Passenger Corporation (Amtrak), is seeking federal financial assistance to aid in the design and construction of the Project through USDOT. FRA is the lead agency preparing an environmental impact statement (EIS) to comply with the National Environmental Policy Act (NEPA) for the Project.

Two concerns related to the High Line—a protected property under Section 4(f) of the USDOT Act of 1966 (49 U.S.C. 303 and 23 U.S.C. 138)—were identified in your letter: (1) that construction and operation of the Platform would make access to the High Line structure to conduct inspections, maintenance, painting, and repairs more difficult; and (2) that the presence of the Platform within five feet of the High Line would add costs to NYC Parks' ability to maintain the structure, as such activities (e.g., lead paint removal, painting, concrete and steel repairs, and drainage improvements) cannot be performed as efficiently and cost-effectively in areas with restricted access and clearances. FRA understands the significance of the High Line, considered the concerns raised by NYC Parks, and finds the existing agreements, zoning, specifications, and mitigation identified for the Project would address those concerns.

As part of its consideration of NYC Parks' concerns, FRA consulted with the Project Sponsor to obtain additional information and an understanding of existing agreements. As detailed in the enclosed July 21, 2021 letter from Related (Attachment 1), the effects of development under and around the High Line at the Western Rail Yard have been vetted extensively over the past twelve years (since preparation of

the 2009 *Western Rail Yard Final Environmental Impact Statement* prepared pursuant to the requirements of New York's State Environmental Quality Review Act (SEQRA) and City's Environmental Quality Review (CEQR)), including extensive engagement with NYC Parks and Friends of the High Line.

After the 2009 SEQRA/CEQR Final EIS, the City of New York negotiated and agreed to specific rights and protections with respect to the High Line in the Western Rail Yard, to ensure there would be coordination between NYC Parks, Friends of the High Line, and Related to allow for the rehabilitation, operation, and maintenance of the High Line for public recreational use side-by-side with the construction, operation, and maintenance of the Platform and the Overbuild development at the Western Rail Yard. The Amended, Modified, and Restated High Line Easement Agreement¹ (Attachment 2), to which the City of New York is a party, provides for, among other things:

- Perpetual easements over the Western Rail Yard for the High Line structure, which allow “any alterations, replacements, substitutions and renewals thereof” and include structural supporting elements;
- Reciprocal easements between the City of New York and the owners of the Western Rail Yard parcels to enter the Western Rail Yard parcels and the High Line easement area, respectively. The access easement benefiting the City of New York explicitly provides access for City personnel “to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements” to the High Line and related support facilities;
- The City's review of any work that involves the Western Rail Yard developer's exercise of its rights under the Easement Agreement (e.g., construction of the Platform that affects the High Line);
- The Western Rail Yard developer's responsibility for the restoration of any High Line structures damaged in the course of the developer's exercise of its rights under the Easement Agreement; and;
- Construction-period coordination between the City and the Western Rail Yard developer to ensure that the Western Rail Yard mixed-use development (which included the Platform that is the subject of the current EIS) and the restoration and use of the High Line as a park proceed in a timely and safe manner.

The rights of the City of New York were specifically granted by Related and the Metropolitan Transportation Authority to ensure that the City has the rights to undertake the site preparation work referenced in your June 18, 2021 letter in coordination with the development of the Western Rail Yard. In addition, the NYC Zoning Resolution for the Special Hudson Yards District, specifying the five-foot clearance between the High Line and adjacent development, has been in place since 2009.

While NYC Parks did not specifically raise concerns about construction of the Tunnel Encasement under the High Line, FRA wants to note for NYC Parks that there are also measures in place to protect the High Line relative to that construction. Amtrak's Construction Specifications for the Project, specifically Sections 02254 “Protection of Existing Facilities, Structures, Utilities and Railroad Infrastructure,” and 02259 “Underpinning High Line Structure” (enclosed, Attachment 3) include

¹ Dated April 10, 2013, and recorded at City Register File Number 2013000276097

requirements for pre- and post-construction surveys of the portion of the High Line that would be subject to underpinning as a result of construction of the Amtrak Tunnel Encasement. The specifications include additional requirements for monitoring movement of the structure during construction. These surveys should identify any existing points of the High Line structure on the Western Rail Yard site requiring maintenance or repair.

In 2018, the structural engineering firm Silman reviewed and approved these specifications and the details of underpinning the High Line on behalf of Friends of the High Line (with NYC Parks copied on correspondence), as shown on the enclosed letter (Attachment 4).²

Through the NEPA Record of Decision (ROD) for the Project, FRA would require the Project Sponsor to develop a Construction Environmental Protection Plan (CEPP) that protects the High Line during construction activities for the Project and meets the conditions of the 2009 Letter of Resolution (LOR) among the Metropolitan Transportation Authority (MTA), the New York City Planning Commission (CPC), the New York State Historic Preservation Office (NYSHPO), and WRY Tenant LLC. The conditions of the LOR include design overview by the New York State Office of Parks, Recreation and Historic Preservation of High Line-related aspects of the preliminary and pre-final stages design plans, as well as development and implementation of a CEPP during construction at the site, and the opportunity to develop additional mitigation measures if there are unavoidable adverse impacts to historic resources. In addition, FRA would include in the ROD requirements that the Project Sponsor would consult with NYC Parks regarding those aspects of the Platform design that relate to the High Line. Design plans for the Platform would be submitted at the preliminary and pre-final design stages. If NYC Parks identifies substantive concerns with maintenance and operation access, the Project Sponsor would continue coordination with NYC Parks to mitigate those concerns.

The measures that are in place and that would be required as part of the ROD for the Project would address the concerns noted in your letter. As described in FRA's letter dated April 19, 2021, the pre-decisional draft of the Section 4(f) Evaluation—which was included in the NEPA Draft EIS published on June 11, 2021—concluded that elements of the Project scope would result in potential impacts to the High Line. These impacts, as described in the letter (enclosed, Attachment 5) and in the Draft EIS, would be temporary, occur during construction, and would not result in permanent physical alterations. Construction of the Project would not alter any of the public park features of the High Line and underpinning the High Line's underground foundation would not preclude the public from using the High Line during construction.

NYSHPO concurred with FRA's Section 106 finding of No Adverse Effect to historic properties with the conditions noted above (to be included in the ROD). SHPO's concurrence with the No Adverse Effect finding was the basis of the FRA's *de minimis* finding under Section 4(f) for the minor use of the High Line. FRA's Section 4(f) regulations provide the public an opportunity to comment on *de minimis* impacts to public parks. The comment period for the *de minimis* impact to the High Line coincided with the 45-day public comment period on the Draft EIS, which concluded July 26, 2021. As shown on the enclosed letter dated July 23, 2021, the U.S. Department of Interior reviewed the Draft EIS and Draft Section 4(f) Evaluation and did not object to FRA's determination of a *de minimis* impact finding (Attachment 6). No comments on FRA's intent to make *de minimis* impact for the minor Section 4(f)

² This letter references the Amtrak Gateway project which is separate from the Western Rail Yard Infrastructure Project; however, the construction documents reviewed included the Tunnel Encasement portion of the Project.

use of the High Line were received from the public during this period.

In consideration of the above, FRA has determined that the Project would not adversely affect the activities, features, or attributes that qualify the High Line for Section 4(f) protection and would result in a *de minimis* impact on the High Line. We are seeking concurrence from NYC Parks with this determination. If NYC Parks concurs with the *de minimis* impact determination, please affirm that concurrence by signing below. FRA kindly requests your response within two weeks, and if additional time is needed, please reach out to us. The outcome of this coordination process will be documented in the Final EIS.

Should you have any questions or concerns regarding this letter, please contact Ms. Becky Blatnica, Environmental Protection Specialist at WRYProject@dot.gov.

Sincerely,

MARLYS A
OSTERHUES

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A OSTERHUES
Date: 2021.07.28 12:47:16
-04'00'

Marlys Osterhues
Chief, FRA Environment and Project Engineering Division

Cc: Rebecca Blatnica, USDOT/Volpe
Colleen Alderson, NYC Parks
Michael Bradley, NYC Parks
Katherine Riley, NYC Parks
Peter Schikler, NYC Law Department
Hilary Semel, NYC Mayor's Office of Environmental Coordination

Enclosures:

- Attachment 1 – Letter from Related dated July 21, 2021
- Attachment 2 – High Line Easement Agreement, City Register File Number 2013000276097
- Attachment 3 – Amtrak's Construction Specifications for the Project
- Attachment 4 – Letter from Silman on behalf of Friends of the High Line
- Attachment 5 – FRA's letter to NYC Parks dated April 19, 2021
- Attachment 6 – Letter from U.S. Department of Interior dated July 23, 2021



NYC Parks Affirmation of Section 4(f) Determination of *de minimis* Impact

Date

9/3/2021

Title



Director of Environmental Review

Attachment 1

Letter from Related dated July 21, 2021



July 21, 2021

Via FedEx

Ms. Andrea Poole
Environmental Protection Specialist
Office of Railroad Policy and Development
U.S. DOT Federal Railroad Administration
1200 New Jersey Avenue, SE.
Washington, D.C. 20590

Re: NYC Parks Comments on Western Rail Yard Infrastructure Project DEIS

Dear Ms. Poole:

I am writing in response to a letter dated June 18, 2021 (the “Letter”) that the New York City Department of Parks & Recreation (“NYC Parks”) submitted regarding the draft Environmental Impact Statement (the “DEIS”) for the Western Rail Yard Infrastructure Project (the “Project”). As you know, the Project is a joint venture between WRY Tenant LLC (“Related”) and National Railroad Passenger Corporation to construct and operate a structural platform and a railroad right-of-way preservation tunnel encasement in the western half of the Metropolitan Transportation Authority Long Island Rail Road John D. Caemmerer Yard, which is bounded by West 30th and West 33rd streets and between 11th and 12th avenues (such area, the “Western Rail Yard”).

The DEIS evaluated the effects of the Project on the High Line – a public park owned by the City of New York and under the jurisdiction of NYC Parks (the “High Line”) – located within the Western Rail Yard. Based on the required implementation of a Construction Protection Plan (which would be required to meet the guidelines set forth in the New York City Department of Buildings’ Technical Policy and Procedure Notice #10/88, the New York City Landmark Preservation Commission’s “Protection Programs for Landmarked Buildings” guidance document, and the National Park Service’s Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction), measures to reduce noise and vibration levels, and a limited construction work schedule, the DEIS correctly stated that the Federal Railroad Administration expects to determine that the Project would have *de minimis* impacts on the High Line.

The Letter contended that additional mitigation measures were needed because the Project and the construction of the Project will make it more difficult to access the High Line for inspection, maintenance, painting, and repair. Specifically, NYC Parks claimed that the Project’s proximity to the High Line will affect NYC Parks’ ability to maintain the High Line structure and make it less efficient and more costly to undertake site preparation work (“lead paint removal and painting of the structure, concrete and steel repairs, and drainage improvements”) that will be needed in connection with the completion of the third phase of the High Line. NYC Parks

requested that the mitigations be revised to include an inspection of the High Line structure in the areas where the Project construction will affect High Line access and completion of any structural repairs and painting prior to the commencement of the Project construction.

While we share NYC Parks' commitment to preserving and protecting the High Line, we respectfully disagree that additional mitigations are needed to avoid more than *de minimis* impacts to the High Line. The effects of development under and around the High Line at the Western Rail Yard have been vetted extensively over the past twelve years, including extensive engagement by NYC Parks. Numerous existing protections for the High Line outlined below, together with the measures identified in the DEIS, will provide sufficient protection for the High Line during the construction and operation of the Project so as to avoid anything more than *de minimis* impacts on the use and operation of the High Line.

A prior Environmental Impact Statement for the Western Rail Yard mixed-use development (which included the platform that is the subject of the DEIS) issued in October 2009 (CEQR No. 09DCP007M) (the "First EIS") assessed the effects of construction under and around the High Line, both as an open space resource and a historic architectural resource. The First EIS did not identify any open space impacts with respect to the High Line.¹ The First EIS did, however, require the lead agencies and Related to develop a Letter of Resolution with the New York State Office of Parks, Recreation, and Historic Preservation providing for the implementation of a construction protection plan to protect the High Line from any potential construction-related adverse physical impacts, such as ground-borne construction-period vibrations, falling debris, and damage from heavy machinery.² This commitment is also set forth in that certain Restrictive Declaration dated April 10, 2014 and recorded at City Register File Number 2014000154631 (the "Restrictive Declaration") recorded against the Western Rail Yard property.³ As a result of these measures, the First EIS determined that there would be no significant adverse impacts on the High Line as a result of the proposed development.

Subsequently, the City of New York negotiated and agreed to specific rights and protections with respect to the High Line in the Western Rail Yard to ensure that there would be coordination between NYC Parks and Related to allow for the rehabilitation, operation, and maintenance of the High Line for public recreational use side-by-side with the construction, operation, and maintenance of the platform and mixed-use development by Related at the Western Rail Yard. The Amended, Modified, and Restated High Line Easement Agreement dated April 10, 2013 and recorded at City Register File Number 2013000276097 (the "Easement Agreement"), to which the City of New York is a party, provides for, among other things:

- Perpetual easements over the Western Rail Yard for the High Line structure, including "any alterations, replacements, substitutions and renewals thereof" and for structural supporting elements;

¹ See First EIS, Chapter 6 Open Space.

² First EIS, Chapter 8 Historic Resources p. 8-16 and Chapter 21 Construction Impacts pp. 21-3 - 21-4.

³ Restriction Declaration Section 3.01(h).

July 21, 2021

Page 3

- Reciprocal easements as between the City of New York and the owners of the Western Rail Yard parcels to enter the Western Rail Yard parcels and the High Line easement area, respectively. The access easement benefiting the City of New York provides explicitly for access for City personnel “to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements” to the High Line and related support facilities;
- The City’s review of any work that involves the Western Rail Yard developer’s exercise of its rights under the Easement Agreement (e.g., construction of the platform that affects the High Line);
- The Western Rail Yard developer’s responsibility for the restoration of any High Line structures damaged in the course of the developer’s exercise of its rights under the Easement Agreement; and
- Construction-period coordination between the City and the Western Rail Yard developer to ensure that the Western Rail Yard mixed-use development (which included the platform that is the subject of the DEIS) and the restoration and use of the High Line as a park proceed in a timely and safe manner.

Importantly, the foregoing rights of the City of New York (and NYC Parks as the City agency with jurisdiction over the High Line) were specifically granted by Related and the Metropolitan Transportation Authority to ensure that the NYC Parks has the rights to undertake the site preparation work referenced in the Letter in coordination with Related’s development of the Western Rail Yard.

In summary, the effects of development under and around the High Line have been studied carefully and accounted for in the First EIS and have been implemented, with the extensive involvement and consent of the City of New York and NYC Parks, in the Restrictive Declaration and Easement Agreement. These items were omitted from the Letter and are conclusive that additional mitigation measures are not needed to avoid more than *de minimis* impacts to the High Line.

Thank you for your attention to this matter.

Sincerely,



Andrew Rosen

WRY Tenant LLC c/o The Related Companies LP

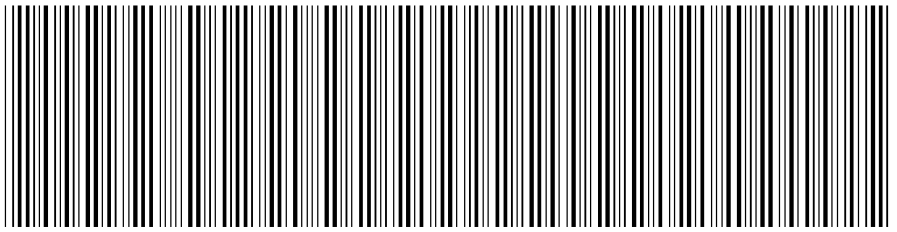
cc: Tal Golomb, Fried, Frank, Harris, Shriver & Jacobson LLP

Attachment 2

High Line Easement Agreement, City Register File Number 2013000276097

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 86

Document ID: 2013041500721008

Document Date: 04-10-2013

Preparation Date: 06-14-2013

Document Type: EASEMENT

Document Page Count: 84

PRESENTER:

ROYAL ABSTRACT OF NEW YORK
LLC(PICK-UP/RANDY)
500 5TH AVENUE
SUITE 1540
NEW YORK, NY 10110
902214-215

RETURN TO:

ROYAL ABSTRACT OF NEW YORK
LLC(PICK-UP/RANDY)
500 5TH AVENUE
SUITE 1540
NEW YORK, NY 10110
902214-215

Borough	Block	Lot	Unit	Address
MANHATTAN	702	10	Entire Lot 1	NA WEST 30TH STREET

Property Type: OTHER Easement

Borough	Block	Lot	Unit	Address
MANHATTAN	676	3	Entire Lot	N/A WEST 30TH STREET

Property Type: OTHER Easement

☒ Additional Properties on Continuation Page

CROSS REFERENCE DATA

CRFN _____ or DocumentID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

GRANTOR/SELLER:

METROPOLITAN TRANSPORTATION AUTHORITY
347 MADISON AVENUE
NEW YORK, NY 10017

GRANTEE/BUYER:

CITY OF NEW YORK
CITY HALL
NEW YORK, NY 10007

☒ Additional Parties Listed on Continuation Page

FEES AND TAXES

Mortgage :

Mortgage Amount: \$ 0.00

Taxable Mortgage Amount: \$ 0.00

Exemption:

TAXES: County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

Additional MRT: \$ 0.00

TOTAL: \$ 0.00

Recording Fee: \$ 462.00

Affidavit Fee: \$ 0.00

Filing Fee:

\$ 0.00

NYC Real Property Transfer Tax:

\$ 0.00

NYS Real Estate Transfer Tax:

\$ 0.00

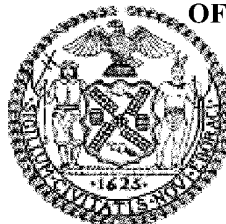
**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE**

CITY OF NEW YORK

Recorded/Filed 07-12-2013 15:22

City Register File No.(CRFN):

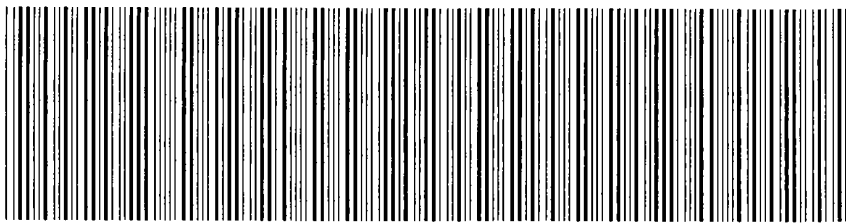
2013000276097



Annette M. Hill

City Register Official Signature

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



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RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 86

Document ID: 2013041500721008

Document Date: 04-10-2013

Preparation Date: 06-14-2013

Document Type: EASEMENT

PROPERTY DATA

Borough	Block	Lot	Unit	Address	
MANHATTAN	702	4	Entire Lot	NA	553 WEST 30TH STREET
Property Type: OTHER Easement					

PARTIES

GRANTOR/SELLER:

LONG ISLAND RAIL ROAD COMPANY
347 MADISON AVENUE
NEW YORK, NY 10017

GRANTOR/SELLER:

LEGACY YARDS TENANT LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023

GRANTOR/SELLER:

ERY TENANT LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023

GRANTOR/SELLER:

WRY TENANT LLC
60 COLUMBUS CIRCLE
NEW YORK, NY 10023

8

AMENDED, MODIFIED, AND RESTATED HIGH LINE EASEMENT AGREEMENT

AMENDED, MODIFIED, AND RESTATED HIGH LINE EASEMENT AGREEMENT made this 10 day of April, 2013 (this "Agreement"), among METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York ("MTA"), LONG ISLAND RAIL ROAD COMPANY, each having its principal place of business at 347 Madison Avenue, New York, New York 10017, and THE CITY OF NEW YORK a municipal corporation formed pursuant to the laws of the State of New York, having its principal office at City Hall, New York, NY 10007 (the "City" or the "Easement Holder").

WITNESSETH:

MTA is the owner of two certain parcels of land in the City of New York, State of New York known as the John D. Caemmerer West Side Yard, located (i) between West 30th and 33rd Streets and between 10th and 11th Avenues and more particularly described in Exhibit A-1 attached hereto (the "Eastern Rail Yard" or "ERY") and (ii) between West 30th and 33rd Streets and between 11th and 12th Avenues and more particularly described in Exhibit A-2 attached hereto (the "Western Rail Yard" or "WRY"; the ERY and WRY are collectively referred to as the "WSY").

MTA has, by a Declaration of Easements (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) dated May 26, 2010 and recorded in the Office of the City Register, City of New York at CRFN 2010000194078 (the "ERY Declaration of Easements"), subdivided its fee interest in the ERY into two (2) separate and distinct fee parcels located above and below a horizontal limiting plane described in the ERY Declaration of Easements, and known as (i) the "ERY Yards Parcel", as more particularly described in Exhibits A-3 attached hereto (the owner of the ERY Yards Parcel from time to time, the "ERY Yards Parcel Owner"), and (ii) the "ERY Facility Airspace Parcel", as more particularly described in Exhibit A-4 attached hereto, (the owner(s) of the ERY Facility Airspace Parcel, from time to time, the "ERY Facility Airspace Parcel Owner", and collectively with the ERY Yards Parcel Owner, "ERY Parcel Owners").

MTA has, by a Declaration of Easements (Western Rail Yard Section of the John D. Caemmerer West Side Yard) dated May 26, 2010 and recorded in the Office of the City Register, City of New York at CRFN 2010000194077 (the "WRY Declaration of Easements"), subdivided its fee interest in the WRY into two (2) separate and distinct fee parcels located above and below a horizontal limiting plane described in the WRY Declaration of Easements, and known as (i) the "WRY Yards Parcel", as more particularly described in Exhibits A-5 attached hereto (the owner of the WRY Yards Parcel from time to time, the "WRY Yards Parcel Owner"), and (ii) the "WRY Facility Airspace Parcel", as more particularly described in Exhibit A-6 attached hereto (the owner(s) of the WRY Facility Airspace Parcel, from time to time, the "WRY Facility Airspace Parcel Owner", and collectively with the WRY Yards Parcel Owner, "WRY Parcel Owners"). (The ERY Yards Parcel and the WRY Yards Parcel are referred to collectively herein as the "Yards Parcels"). The ERY Yards Parcel Owner and the WRY

Yards Parcel Owner are referred to collectively herein as the "Yards Parcel Owners". The ERY Facility Airspace Parcel and the WRY Facility Airspace Parcel are referred to collectively herein as the "Facility Airspace Parcels". The ERY Facility Airspace Parcel Owner and the WRY Facility Airspace Parcel Owner are referred to collectively herein as the "Facility Airspace Parcel Owners". The Yards Parcel Owners and the Facility Airspace Parcel Owners (including each individual Severed Parcel Owner (as hereinafter defined)) are referred to, collectively, as the "Parcel Owners" and each individually as a "Parcel Owner".)

MTA, Long Island Rail Road Company ("LIRR") and ERY Tenant LLC (f/k/a RG ERY LLC) entered into an Agreement of Lease (Eastern Rail Yard Section of the John D. Caemmerer West Side Yard) (the "ERY Balance Lease"), dated as of the date hereof, a memorandum of which is to be recorded in the Office of the City Register, New York County, pursuant to which MTA has leased to ERY Tenant LLC (together with its respective successors and assigns, the "ERY Tenant") the ERY Facility Airspace Parcel, upon the terms and conditions set forth in the ERY Balance Lease and the documents executed or contemplated to be executed in connection therewith.

MTA, LIRR and Legacy Yards Tenant LLC ("Tower C Tenant") entered into an Agreement of Severed Parcel Lease (the "Tower C Lease"), dated as of the date hereof, a memorandum of which is to be recorded in the Office of the City Register, New York County, pursuant to which MTA has leased to Tower C Tenant, those premises described on Exhibit A-7 attached hereto.

MTA, LIRR and WRY Tenant LLC (f/k/a RG WRY LLC) entered into an Agreement to Enter Into Lease ("WRY Agreement to Enter into Lease") dated as of May 26, 2010, a memorandum of which was recorded in the Office of the City Register, New York County at CRFN 2010000194079, pursuant to which MTA agreed to lease and to sell to WRY Tenant LLC (together with its respective successors and assigns, the "WRY Tenant") the WRY Facility Airspace Parcel, upon the terms and conditions set forth in the WRY Agreement to Enter into Lease and the documents executed or contemplated to be executed in connection therewith.

ERY Tenant, WRY Tenant and Tower C Tenant intend to construct, operate and maintain a mixed-use development in their respective Facility Airspace Parcels, including a roof and associated facilities over the Yards Parcel (the "LIRR Roof and Facilities"), and in connection therewith, will locate buildings, improvements, other temporary and permanent structures (collectively, the "Facility Airspace Improvements") and equipment above, below, and/or adjacent to the High Line Easement Area, and the Viaduct (including without limitation the Spur (as each are defined below)). ERY Tenant, WRY Tenant and Tower C Tenant further intend to further subdivide their respective Facility Airspace Parcels into several development parcels (each, including the premises leased pursuant to the Tower C Lease, a "Severed Parcel" and the Parcel Owner thereof, including Tower C Tenant, a "Severed Parcel Owner"). As used herein, the term "Parcel" shall mean, as the context requires, the Facility Airspace Parcels (including one or more Severed Parcels created therein) and/or the Yards Parcel.

The WSY is subject to an easement, the sources of which are more particularly described in Exhibit B attached hereto (the "Original High Line Easement"), within which is located an elevated railway viaduct with highway-railroad grade separation structures extending from the northern side of West 30th Street west of 10th Avenue to the point of intersection of the WSY with West 33rd Street (the "High Line Viaduct"), which forms a portion of that certain railway easement which begins at the corner of Gansevoort Street and Washington Street, New York, New York (such location being formerly identified as 75-95 Gansevoort Street) and runs northerly and westerly to near 547-55 West 34th Street and the West 34th Street streetbed, identified as Line Code 4225 in the records of the United States Railway Association (the "High Line"). Also located within the Original High Line Easement is a spur track viaduct with highway-railroad grade separation structures (the "Spur"), extending east from the High Line Viaduct and ending at the corner of 10th Avenue and West 30th Street (excluding that rail separation structure segment situated over 10th Avenue). The Spur and the High Line Viaduct (each of which are depicted in Exhibit C annexed hereto), inclusive of the tracks, trestles, bridges, wires, conduits, cables, rails, signals, drainage and other pipes, structures, instruments, appliances and other facilities existing within the High Line Viaduct and the Spur as may now or hereafter exist, are collectively referred to herein as the "Viaduct". Pursuant to and subject to the terms of the Original High Line Easement, the Easement Holder is permitted to use and operate the Viaduct to maintain railroad tracks, and equipment and utilities appurtenant thereto, including the Viaduct, and to have reasonable access over the WSY to exercise said easement. CSX Transportation Inc. ("CSXT"), the Easement Holder immediately prior to the City's acquisition of the Original High Line Easement, and its predecessors in interest, have conducted no rail service over the Viaduct since 1982.

Subject to this Agreement, the City desires to improve and redevelop the Viaduct, and to convert the use of the Viaduct to public space, public trail use or other public recreational purpose, as general municipal property within the limits of the Original High Line Easement, as amended, modified and restated by this Agreement, pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) and 49 C.F.R. Section 1152.29 (collectively, the "Railbanking Legislation"), and pursuant to a Certificate of Interim Trail Use (as may be modified or superseded, the "CITU") dated June 13, 2005 and issued by the federal Surface Transportation Board to the City in accordance with the Railbanking Legislation.

The acquisition and site selection of the Original High Line Easement and Viaduct by the City has been approved pursuant to Section 197-c of the New York City Charter by resolution of the City Planning Commission ("CPC") dated June 9, 2010, Cal. No. 6 (C 100180 PCM), and by resolution of the New York City Council dated July 29, 2010 (No. 393).

In furtherance of the foregoing initiatives, (i) CSXT and the City entered into a Trail Use Agreement, dated November 4, 2005, as amended by that certain Amendment to Trail Use Agreement dated as of July 11, 2012 (collectively, as may be amended, the "TUA"), and (ii) prior to the execution of this Agreement, CSXT has contributed the High Line, the Spur and the Original High Line Easement to the City by

Quitclaim Deeds from CSXT to the City, and accordingly the City has become the sole Easement Holder for all purposes hereunder.

The parties intend that the conversion and redevelopment of the entirety of the Viaduct situated on the WRY Facility Airspace Parcel the "WRY High Line") shall, subject to this Agreement, constitute and be operated and maintained only in a manner which qualifies same as "publicly accessible open space" within the meaning of Section 93-75 of the Zoning Resolution of the City of New York (as amended from time to time, the "Zoning Resolution"). In addition, the parties intend that the conversion and redevelopment of the entirety of the Spur and High Line segment situated on the ERY Facility Airspace Parcel (the "ERY High Line") shall constitute a "public access area" and be operated and maintained in compliance with Section 93-71 of the Zoning Resolution.

The parties further acknowledge that the Zoning Resolution mandates the provision of certain public access points or connections (such mandated access points or connections are hereinafter referred to as "Public Connections") to the WRY High Line and ERY High Line, respectively, and in connection therewith certain modifications to the physical structure of the Viaduct will be required. Specifically, the Zoning Resolution requires the applicable Parcel Owner(s) and the Easement Holder (with respect to the development and maintenance of the WRY High Line) to: (a) with respect to the WRY, provide Public Connections to, and develop and maintain, the WRY High Line in accordance with (i) a restrictive declaration, to be executed and recorded by the applicable Parcel Owner(s) as contemplated under Section 93-06 of the Zoning Resolution (the "WRY Restrictive Declaration") and (ii) site and landscaping plans and a maintenance plan that shall be subject to the certification ("Certification") of the Chairperson of CPC (the "Chairperson") in accordance with Section 93-78 of the Zoning Resolution, which plans shall include, among other things, the locations, dimensions and other details of the Public Connections to the WRY High Line (collectively, the "WRY Site and Landscaping Plans"); and (b) with respect to the ERY High Line, provide Public Connections in accordance with Section 93-71 of the Zoning Resolution pursuant to plans that shall be subject to Certification of the Chairperson in accordance with Section 93-70 of the Zoning Resolution (collectively, the "ERY Site and Landscaping Plans" and together with the WRY Site and Landscaping Plans, the "Site and Landscaping Plans").

Subject to this Agreement, the Parcel Owners desire to support the initiatives of the City as Easement Holder to improve and redevelop the Viaduct, including the conversion of the High Line Viaduct and the Spur to and use thereof as public space, public trail use or other public recreational purpose within the limits of the High Line Easement Area (as hereinafter defined), such initiatives being consistent with the development plans of the Parcel Owners pursuant to the ERY Balance Lease, the Tower C Lease, the WRY Agreement to Enter into Lease and the documents executed or contemplated to be executed in connection therewith.

Parcel Owners and Easement Holder now wish to amend, modify and restate the Original High Line Easement in its entirety to permit implementation of such initiatives, for the benefit of both Parcel Owners and Easement Holder.

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Easement Holder and the Parcel Owners covenant and agree as follows:

1. **High Line Easement.** The Parcel Owners hereby amend, modify and restate the Original High Line Easement in its entirety, and grant to Easement Holder, subject to the reservations, exceptions and other terms of this Agreement, the following rights and easements across the Yards Parcels and the Facility Airspace Parcels, for the durations specified below (such rights and easements, the "High Line Easement"); provided, that if no duration is so specified for a particular easement, such easement shall run in perpetuity:

- (a) **High Line Easement Area.** A perpetual easement over the portions of the WSY in the locations, with the dimensions more particularly described and depicted in Exhibit C annexed hereto, and within a lower limiting plane commencing at an elevation equal to the bottom of the trestle of the High Line Viaduct and Spur on the date hereof (as such elevations vary across the WSY and are indicated in Exhibit C) and an upper limiting plane at an elevation of 61 feet Manhattan datum over the WRY and 63.4 feet Manhattan datum over the ERY (such elevations equal to 22.5 feet above the highest rail existing on the Viaduct, WRY and ERY, respectively, on the date hereof as depicted in Exhibit C annexed hereto), within which the High Line Viaduct and Spur, including any alterations, replacements, substitutions and renewals thereof in accordance with this Agreement, shall be located (the "High Line Easement Area"). Spot elevations indicating the elevations of the bottom of the trestle of the Viaduct and the top of rail on the Viaduct on the date hereof are depicted in Exhibit C annexed hereto. The parties agree that notwithstanding the description and depiction of the Viaduct and Viaduct Support Facilities on Exhibit C, the Viaduct and Viaduct Support Facilities shall be modified after the date of this Agreement as set forth in Exhibit F annexed hereto (i.e., to remove certain columns supporting and substitute certain structural support for the Viaduct and to add certain 'balcony' space to the Viaduct), and upon such modification, the Viaduct Support Facilities and the Viaduct and High Line Easement Area shall be deemed to be as altered according to Exhibit F. Upon request of either Parcel Owner or the Easement Holder, the parties shall execute and deliver in recordable form an instrument modifying the legal description of the High Line Easement Area, as aforesaid, and shall execute and deliver such other instruments as may be necessary for recording such easement modification. The party making the request shall prepare the easement modification and pay any and all recording charges, transfer taxes and other fees, if any, that may be payable in connection with such easement modification, it being agreed that the parties hereto will avail themselves of any exemption from such charges, taxes and fees as may then be available.

(b) Easement for Location of Viaduct Support Facilities. A perpetual easement over the portions of the WSY in which the footings, foundations, columns, column brackets, trusses, cross girders, supports, drainage pipes, conduit and other structural and appurtenant elements which provide structural and other support for the High Line Viaduct and Spur ("Viaduct Support Facilities") are currently located, to maintain the same, including any alterations, replacements, substitutions and renewals thereof in their current locations, and to attach additional drainage pipes (to connect to sewers and/or runoff into the street) and conduits to the Viaduct Support Facilities and to access utilities in locations approved by the applicable Parcel Owner in accordance with this Agreement (such approval not to be unreasonably withheld, delayed or conditioned) for so long as such facilities support and serve the High Line Viaduct and Spur (including any alterations, replacements, substitutions and renewals of the High Line Viaduct and Spur). The general locations of the columns comprising the Viaduct Support Facilities on the date hereof are depicted in Exhibit C annexed hereto, but shall be subject to modification as depicted in Exhibit F annexed hereto.

(c) Additional Easements and Reservations.

(i) Easement Holder Entry. A perpetual right and easement for the benefit of the Easement Holder to have its personnel enter in, upon and through the Yards Parcels and the Facility Airspace Parcels (i.e., outside the High Line Easement Area) in connection with and to the extent reasonably necessary or desirable (A) to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements to the Viaduct and Viaduct Support Facilities, (B) for the Easement Holder to comply with any legal requirements applicable to its respective property or (C) as otherwise required, permitted or contemplated pursuant to this Agreement (any such physical entry into the WSY, an "Easement Holder Entry" and any work undertaken through any Easement Holder Entry, including without limitation an inspection, "Easement Holder Work"). Any Easement Holder Entry shall be subject to the terms of this Agreement.

For the avoidance of doubt, neither (a) any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements to the Viaduct by Easement Holder in, on or over the WSY that (i) take place entirely within the High Line Easement Area, and (ii) do not involve any entrance onto or over any portion of the Facility Air Space Parcel or Yards Parcel (other than within the High Line Easement Area) nor (b) use of the High Line Viaduct or Spur for Public Space or Railroad Use shall constitute an Easement Holder Entry or a violation of this Agreement. Nothing in this Agreement shall provide any Parcel

Owner (with respect to the Yards Parcel Owner, in its proprietary capacity hereunder) with any right to review such use and enjoyment of the High Line Viaduct and Spur, except to the extent expressly provided herein with respect to "Interim Use" (hereinafter defined).

- (ii) Parcel Owners Entry. The High Line Easement shall be subject to the right of the Parcel Owners to have their personnel enter in, upon and through the High Line Easement Area in connection with and to the extent reasonably necessary or desirable (A) to perform any inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements necessary or desirable to be performed by the Parcel Owners with respect to the Yards Parcels and/or the Facility Airspace Parcels, (B) for each Parcel Owner to comply with any legal requirements applicable to its respective property, (C) to make Public Connections and other connections (if any) to the Viaduct pursuant to Section 1(c)(iii) of this Agreement, (D) to perform any "WRY High Line Elevation Alteration" (as hereinafter defined) pursuant to Section 1(c)(iv) of this Agreement, (E) to install any Facility Airspace Improvement Support Facilities pursuant to Section 1(c)(v) hereof, (F) to install Construction Protection pursuant to Section 1(c)(v) hereof, or (G) as otherwise required, permitted or contemplated pursuant to this Agreement (any such physical entry into the High Line Easement Area and/or modification, relocation or other work on the Viaduct or Viaduct Support Facilities, a "Parcel Owner Entry", and any such work undertaken through a Parcel Owner Entry, including without limitation an inspection, "Parcel Owner Work"). Any Parcel Owner Entry shall be subject to the terms of this Agreement.

For the avoidance of doubt, the parties understand and agree that: (1) no inspections, repairs, maintenance, construction, restoration, improvements, alterations or capital improvements to the WSY, access thereon, operation thereof or any other use or enjoyment of the WSY by the Parcel Owners and any of their contractors, invitees, lessees, licensees, occupants, agents, or designees (collectively, "WSY Occupants") that does not (I) constitute actual physical entry into the High Line Easement Area or (II) involve any alteration to the Viaduct or Viaduct Support Facilities, shall be deemed a Parcel Owner Entry, Parcel Owner Work or a violation of this Agreement; (2) in no event shall (x) any reduction in light and air within the High Line Easement Area caused by the construction and maintenance of improvements on the WSY outside of the High Line Easement Area or (y) any noise or vibrations emanating from the WSY, including without limitation, from construction work by a Parcel Owner or any aspects of rail

operations in the Yards Parcel, be deemed to be a Parcel Owner Entry or a violation of this Agreement; and (3) nothing in this Agreement shall (i) restrict the Parcel Owners from using and enjoying the portions of the WSY not within the High Line Easement Area in accordance with applicable laws nor (ii) provide the Easement Holder (in its proprietary capacity hereunder) with any right to review such use and enjoyment of the WSY.

(iii) Access Connections.

- (1) Subject to and in accordance with the requirements of the Zoning Resolution (including certified Site and Landscaping Plans) and, as applicable, the WRY Restrictive Declaration, the High Line Easement shall be subject to the rights of the Parcel Owners to provide Public Connections to the High Line Viaduct and Spur and, to the extent reasonably necessary, to modify the High Line Viaduct and Spur (e.g., removal of balustrades and other structural elements, and attachments to adjoining connection structures) in accordance with the certified Site and Landscaping Plans. All costs and expenses of modifying the High Line Viaduct and Spur and constructing Public Connections pursuant to a certified Site and Landscaping Plan shall be borne by such Parcel Owner. Without limiting the foregoing, each Parcel Owner shall have the right from time to time to request the creation of additional access points to the High Line Viaduct and Spur from areas that are accessible to the general public (but are not Public Connections required by the Zoning Resolution or a certified Site and Landscaping Plan) or from private areas that are not directly accessible to the public, subject to the consent of the Easement Holder, acting in its sole reasonable discretion, it being agreed that it shall be within Easement Holder's reasonable discretion to withhold or condition such consent based upon, without limitation, City policies, practices or rules for such access points along the High Line. Subject to the certified Site and Landscaping Plan, all Public Connections and other connections shall be designed and constructed so as to be distinct from the Viaduct in character and visual identification so that the Viaduct is not merged (aesthetically) into the adjoining Facility Air Space Parcel or Public Connection thereto.
- (2) So long as the entire Viaduct is being used for Public Use in accordance with and as defined in Section 2 below, the Easement Holder may request that the High Line Easement be supplemented to include one or more public pedestrian

access easements incorporating, as appropriate, paved paths, stairwells, elevators and other means of access to the High Line Viaduct and Spur, across the Facility Airspace Parcels (including any adjacent sidewalks) (each, a "City Access Easement"). Each City Access Easement shall be subject to the consent of the affected Parcel Owner(s), acting in its sole reasonable discretion, it being agreed that it shall be within a Parcel Owner's reasonable discretion to deny a request for a City Access Easement that is, without limitation, inconsistent with the actual or planned use or development of the Parcel in such locations (including frontage on and access to adjoining sidewalks) or any Site and Landscaping Plans. All costs and expenses of constructing, operating and maintaining a City Access Easement shall be borne exclusively by the Easement Holder. In the event that the Easement Holder and affected Parcel Owner(s) agree on the creation of a City Access Easement, the Easement Holder and affected Parcel Owner(s) shall execute an agreement in recordable form supplementing this Agreement to include such City Access Easement as part of the High Line Easement.

- (3) Neither Easement Holder nor any Parcel Owner shall charge the other a fee or other charge for constructing, maintaining or using any Public Connections or City Access Easements. The High Line Easement shall be further subject to the right of the Parcel Owners to enter upon and allow their invitees to enter upon and ambulate within any portion of the Viaduct and through any access points at all times that such portion of the Viaduct is operated for Public Use and open to the public, subject to all applicable laws, rules and policies of governmental authorities (including without limitation the City).

- (4) This Section 1(c)(iii) shall be of no force or effect upon the restoration of Railroad Use, in which case Easement Holder shall secure the Viaduct from public access.

(iv) Right to Change Elevation of WRY High Line.

- (1) Notwithstanding anything to the contrary in this Agreement, but subject to the conditions set forth in this Agreement, the WRY Facility Airspace Parcel Owner reserves the right, in connection with the construction of improvements to the WRY Facility Airspace Parcel (in particular, the construction of the LIRR Roof and Facilities), to raise the elevation of the WRY High Line

along 12th Avenue so as to provide adequate ventilation to the WRY Yards Parcel (a "WRY High Line Elevation Alteration").

- (2) A WRY High Line Elevation Alteration shall be subject to the conditions for Parcel Owner Work set forth in Section 1(d)(i) below and the following additional conditions: (A) the continuation of a High Line Easement Area that exists in such location prior to the WRY High Line Elevation Alteration, together with, as necessary, the right to locate Viaduct Support Facilities, so as to preserve the ability of Easement Holder to recreate or reconstruct a fully connected High Line in the event that Railroad Use is required to be restored from where the High Line enters the WRY from the east at 11th Avenue and leaves the WRY to the north at West 33rd Street on the date hereof (as depicted in Exhibit C annexed hereto); and (B) the execution of a written agreement by the WRY Facility Airspace Parcel Owner seeking a WRY High Line Elevation Alteration reimbursing the Easement Holder, in the event of an order (beyond all administrative or judicial appeals) by the federal Surface Transportation Board or successor governmental authorities with jurisdiction over rail use on the Viaduct restoring rail service on the High Line, for any incremental costs and expenses actually incurred by the Easement Holder in complying with such order that are directly and proximately caused by such WRY High Line Elevation Alteration.
- (3) The cost and expense of any WRY High Line Elevation Alteration location requested by a WRY Facility Airspace Parcel Owner shall be exclusively borne by such WRY Facility Airspace Parcel Owner.
- (4) In connection with any WRY High Line Elevation Alteration, the Easement Holder and the Parcel Owner(s) of the Parcel(s) affected by such WRY High Line Elevation Alteration shall execute, acknowledge and deliver an amendment to this Agreement in recordable form establishing the revised description of the High Line Easement Area and otherwise modifying the High Line Easement as necessary. No action or consent shall be required from any Parcel Owner other than the Parcel Owner(s) whose Parcels are physically affected by such WRY High Line Elevation Alteration in order to effectuate a WRY High Line Elevation Alteration as set forth in this Section 1(c)(iv).

(v) Facility Airspace Improvement Support Facilities; Construction Protection.

- (1) Subject to the provisions set forth in this Agreement, the High Line Easement shall be subject to the right of the respective Parcel Owners to make attachments of conduit, drainage, lighting fixtures and other appurtenances to the underside of the Viaduct (i.e., below the High Line Easement Area), including without limitation the Viaduct Support Facilities (collectively, the "Facility Airspace Improvement Support Facilities") and to thereafter repair, maintain, alter, replace and substitute the same. In addition, the respective Parcel Owners shall have the right to integrate and directly connect Facility Airspace Parcel Improvements with the Viaduct Support Facilities and the underside of the Viaduct so as to locate Facility Airspace Parcel Improvements below the Viaduct, including the right to utilize the base of the Viaduct as a portion of the roof of such improvements (it being agreed that Easement Holder has makes no assurance and has no obligation with respect to the adequacy or suitability of the base of the Viaduct for such purpose). Easement Holder shall have the right to approve any such integration of the Facility Airspace Improvements with the Viaduct Support Facilities and/or the underside of the Viaduct solely to ensure that the same will not materially impair the structural integrity of the Viaduct or Viaduct Support Facilities nor Easement Holder's ability to inspect, repair, maintain, restore, reconstruct, improve or alter the Viaduct and Viaduct Support Facilities, in accordance with the terms of this Agreement.
- (2) The applicable Facility Airspace Parcel Owner shall maintain the Facility Airspace Improvement Support Facilities in good order and repair and in compliance with law, at its sole cost and expense, and shall promptly repair or restore any damage or conditions relating thereto that could, individually or in the aggregate, if not promptly repaired, cause injury (including death) or damage to persons or property within the High Line Easement Area, or cause damage to the Viaduct or Viaduct Support Facilities, or have a material adverse effect on the uses thereof as contemplated under this Agreement. In the event that the applicable Facility Airspace Parcel Owner fails to maintain, repair or restore the Facility Airspace Improvement Support Facilities in the condition required by this Section 1(c)(v)(2), Easement Holder may deliver

notice to the applicable Facility Airspace Owner demanding in specificity that the applicable condition be remedied. If such condition is not cured within thirty (30) days after the delivery of notice (or if the condition reasonably requires more than thirty (30) days to cure, commencement of the cure has not been commenced and is being diligently prosecuted to completion), then Easement Holder may (but shall not be obligated to) undertake such maintenance, repair and restoration at the sole cost and expense of such Facility Airspace Parcel Owner, and such Facility Airspace Parcel Owner shall promptly reimburse the Easement Holder for all such expenditures made by the Easement Holder after receipt of an invoice therefor.

- (3) To the extent necessary or convenient to construct Facility Airspace Improvements, the Easement Holder shall permit the Facility Airspace Parcel Owners to erect temporary scaffolding, sidewalk shelters, bracing, shoring and other protective measures (collectively, "Construction Protection") within the High Line Easement Area on or over the Viaduct pursuant to plans and specifications approved by the Easement Holder in accordance with Section 1(d)(i)(D) below.

(d) Conditions to Entry and Undertaking of Work.

(i) Entry and Work Undertaken by Parcel Owner.

- (A) Conditions. Notwithstanding anything to the contrary set forth in the Agreement, each Parcel Owner Entry shall be subject to the following conditions: (I) Easement Holder shall be provided with reasonable advance written notice of such Parcel Owner Entry, including a description of the work to be undertaken, except to the extent the such Parcel Owner Entry is required in the case of an emergency or in order to inspect or to correct conditions imminently dangerous to persons or property, in which case such notice shall be provided as the circumstances reasonably permit. Reasonable advance written notice shall be not less than ten (10) days in the case of any inspection or other activity which does not involve any construction work upon or closure of any portion of the Viaduct to the general public, and not less than thirty (30) days in the case of any activity which involves construction work upon or closure of any portion of the Viaduct to the general public (except that sixty (60) days shall be required in the case of any activity which involves full closure of any publicly-accessible portion of the Viaduct during hours in which the Highline is open to the public, i.e., for a WRY Highline Elevation Alteration, or

installation of Facility Airspace Improvements or Construction Protection), (II) the entering Parcel Owner shall comply with the insurance requirements set forth in Exhibit E hereof and incorporated by reference; and (III) the entering Parcel Owner shall prosecute the Parcel Owner Work with due care, in accordance with industry standards and in a diligent manner, and the entering Parcel Owner shall make commercially reasonable efforts to minimize physical interference with Easement Holder's use of the High Line Easement Area and Viaduct.

- (B) Further Conditions. Notwithstanding anything to the contrary set forth in this Agreement, no Parcel Owner Work shall be undertaken without compliance with the following conditions: (I) no Parcel Owner Work (once completed) shall preclude "Railroad Use" (hereinafter defined in Section 2) or the restoration of the Viaduct for such purpose, (II) the Parcel Owner Work shall not exceed the load bearing capacity or otherwise undermine or compromise the structural integrity of the Viaduct, (III) the Parcel Owner Work shall be approved by all necessary governmental agencies having jurisdiction over such Parcel Owner Work, and performed in compliance with New York City Buildings Departments rules, regulations and standards generally applicable to structures similar to the Viaduct or generally applicable to the type of the work being undertaken, (IV) the Parcel Owner Work shall be subject to the terms of that certain Letter of Resolution among the MTA, CPC, the New York State Office of Parks, Recreation and Historic Preservation and WRY Tenant LLC regarding the Western Rail Yard Project and (V) subject to the provisions of this Agreement (including, without limitation, clause (D) below), the Parcel Owner Work shall preserve the ability to use the Viaduct for Public Use (it being agreed that any Parcel Owner Work that is described in a certified Site and Landscaping Plan shall be deemed to satisfy this clause (V)). In addition to the foregoing, Parcel Owner shall take commercially reasonable measures to avoid endangerment of the public and to take commercially reasonable measures to minimize interference with Public Use, and to take all measures as may be necessary to avoid interference with Railroad Use, as may be applicable.

- (C) Plans. Except for inspections, repairs and maintenance, prior to commencing any Parcel Owner Work, the applicable Parcel Owner shall submit reasonably detailed plans and specifications, including a description of means and methods, for the Parcel Owner Work to the Easement Holder, and the Easement Holder shall have thirty (30) days to review such plans and specifications and notify the Parcel Owner of any objection to the extent that the proposed Parcel Owner Work does not comply with the provisions of this

Section 1(d)(i) or any other provisions of this Agreement, acting in its reasonable discretion. In the event that Easement Holder fails to object within said thirty (30) day period (provided that the submission makes reference to this Section 1(d)(i)(C) and expressly states that if Easement Holder fails to object to such proposal within thirty (30) days then the proposal shall be deemed approved by Easement Holder) or upon the resolution of any objections timely made, the Parcel Owner may proceed with the Parcel Owner Work. All Parcel Owner Work shall be undertaken substantially in accordance with the plans and specifications that have been approved or deemed approved by Easement Holder as aforesaid. The Parcel Owner Work shall be undertaken at the sole cost and expense of the Parcel Owner performing such Parcel Owner Work, and such Parcel Owner shall be solely responsible for seeking and obtaining all necessary governmental approvals. Such Parcel Owner shall restore any damage to the Viaduct or Viaduct Support Facilities (but not any alterations to the Viaduct or Viaduct Support Facilities contemplated by the approved or deemed approved plans and specifications) caused by such Parcel Owner during the performance of the Parcel Owner Work to a condition at least as good as that which existed immediately prior to the date of such damage (including without limitation restoration of any and all completed improvements and embellishments made to the Viaduct in accordance with the certified Site and Landscaping Plans, as applicable). Any damage not so repaired upon completion of the Parcel Owner Work may be repaired by the Easement Holder, and the applicable Parcel Owner shall promptly reimburse the Easement Holder for the cost of such restoration upon delivery of a written invoice therefor; provided that Easement Holder has delivered written notice to the applicable Parcel Owner of such damage and such Parcel Owner has not commenced the repair of such damage within thirty (30) days after the receipt of such notice and diligently pursued the same to completion.

- (D) Safety Precautions. Notwithstanding anything to the contrary in this Agreement, in the event that a Parcel Owner performs any Parcel Owner Work or any other work on the WSY for which safety considerations and/or applicable legal requirements necessitate (1) the erection of Construction Protection on or over the Viaduct or any portion thereof (and otherwise within the High Line Easement Area), and/or (2) in the event that Construction Protection is not viable (e.g., in the case of a WRY Highline Elevation Alteration), the temporary closure and suspension of the use of all or any portion of the Viaduct, the Easement Holder shall cooperate with such Parcel Owner in connection with any such erection of Construction Protection or temporary closure at no fee

by or charge to such Parcel Owner. Such Parcel Owner shall pay all costs and expenses relating to the erection, maintenance and removal of the Construction Protection (including without limitation any site preparation and restoration). All Construction Protection shall, to the extent commercially practicable, be erected during hours in which the High Line Viaduct is closed to the general public, and shall be promptly removed after it is no longer necessary. If a Parcel Owner has not commenced and/or is not diligently prosecuting the removal of such Construction Protection after it is no longer necessary, then the Easement Holder may, after ten (10) days written notice to the applicable Parcel Owner, remove the Construction Protection, and such Parcel Owner shall reimburse the Easement Holder for the cost of same after delivery of a written invoice therefor. Each Parcel Owner shall provide the Easement Holder with at least thirty (30) days' notice of any request for the erection of Construction Protection, including reasonably detailed information as to the location and duration of the Construction Protection and/or closures, and the reasons for such Construction Protection and/or closures; provided that in the event of an emergency or imminent danger to persons or property, each Parcel Owner may direct a temporary closure upon such prior notice (if any) that may be practicable under the circumstances.

- (ii) Entry by and Work Undertaken by Easement Holder.
- (A) Conditions. Notwithstanding anything to the contrary set forth in this Agreement, any Easement Holder Entry shall be subject to the following conditions: (I) the affected Parcel Owner(s) shall be provided with reasonable advance written notice of such access or entry, including a description of the work to be undertaken, except to the extent such Easement Holder Entry is required to inspect or to correct conditions imminently dangerous to persons or property. Reasonable advance written notice shall be not less than ten (10) days in the case of any Easement Holder Work which does not involve any construction work from outside the High Line Easement Area, and not less than sixty (60) days in the case of any Easement Holder Work which involves construction work on or to the Viaduct or Viaduct Support Facilities from outside the High Line Easement Area or is otherwise reasonably likely to materially affect the use and enjoyment of the affected Parcel Owner's Parcel, (II) Easement Holder shall comply with the insurance requirements set forth in this Agreement, and (III) Easement Holder shall prosecute the Easement Holder Work with due care, in accordance with industry standards, in a diligent manner and at reasonable times, and Easement Holder shall make commercially reasonable efforts to minimize interference with a Parcel Owner's or WSY Occupant's use of its Parcel. Notwithstanding the foregoing, in no

event may the Easement Holder Entry interfere in any way with the rail operations in the Yards Parcels without the express written consent of the Yards Parcel Owner, in its sole discretion.

- (B) Further Conditions. Notwithstanding anything to the contrary set forth in this Agreement, no Easement Holder Work shall be undertaken without compliance with the following conditions: (I) the Easement Holder Work shall be approved by all necessary governmental agencies having jurisdiction over the portion of the Viaduct or Viaduct Support Facilities and the applicable portion of the WSY upon which entry is requested, and shall be performed in compliance with applicable New York City Buildings Departments rules, regulations and standards, and (II) the Easement Holder Work shall be undertaken at the sole cost and expense of the Easement Holder, including the cost of obtaining any necessary government approvals. Except for inspections, repairs and maintenance, prior to commencing any Easement Holder Entry and/or Easement Holder Work, Easement Holder shall submit plans and specifications, including a description of means and methods (which description will detail the times, manner and locations of any Easement Holder Entry), of the Easement Holder Work to the affected Parcel Owner, and the Parcel Owner shall have thirty (30) days to review such plans and specifications and object, acting in its reasonable discretion, to the extent that the proposed Easement Holder Work does not comply with the provisions of this Section 1(d)(ii) or any other provisions of this Agreement. In the event that the affected Parcel Owner fails to object within said thirty (30) day period (provided that the notice makes reference to this Section 1(d)(ii)(B) and expressly states that if the Parcel Owner fails to object to such proposal within thirty (30) days then the proposal shall be deemed approved by Parcel Owner) or upon the resolution of any objections timely made, the Easement Holder may proceed with the Easement Holder Entry and Easement Holder Work. All Easement Holder Work shall be undertaken in accordance with the plans and specifications that have been approved or deemed approved by the affected Parcel Owner. The Easement Holder shall promptly repair any and all damage that may be caused to a Parcel Owner's Parcel (including any improvements located thereon) as a result of an Easement Holder Entry or Easement Holder Work. Any such damage may be repaired by the affected Parcel Owner, and Easement Holder shall promptly reimburse such Parcel Owner for the cost of such repair upon delivery of a written invoice therefor; provided that such Parcel Owner has delivered written notice to the Easement Holder of such damage and the Easement Holder has not commenced the repair of such damage within thirty (30) days after

the receipt of such notice and diligently pursued the same to completion.

- (C) Parcel Entry Standards. The Easement Holder shall perform any Easement Holder Entry or Easement Holder Work in such a manner as to avoid interference with service reliability of the Yards Parcel Owner's rail operations ("Service Reliability") and endangerment to the safety of any personnel, passengers, or members of the general public related to Yards Parcel Owner's rail operations ("Public Safety"), and to take commercially reasonable measures to minimize interference with the use and enjoyment by and safety of the Facility Airspace Parcel Owners and WSY Occupants of the Facility Airspace Parcels. Easement Holder shall follow and shall require its contractors to follow the directions of field staff of the Yards Parcel Owners in carrying out work upon, under or over the Yards Parcel. If any Easement Holder Work involves entry into any portion of the Yards Parcels, such work shall be further subject to the provisions of paragraph (E) below.
- (D) Site and Landscaping Work. Easement Holder shall not commence undertaking Site and Landscaping Plan improvements prior to April 1, 2013. Nothing herein shall be construed to proscribe Easement Holder from undertaking structural rehabilitation, paint removal, ballast and track removal, painting and other remediation work at any time prior to such date, upon and subject to all of the terms of this Agreement.
- (E) Yards Entry Requirements. In addition to the other requirements of this Agreement, any Easement Holder Entry into or upon any portion of the Yards Parcels shall be undertaken only upon the issuance of, and subject to the terms of, an entry license given to the Easement Holder by the Yards Parcel Owner, acting in its quasi-governmental capacity for railroad operations (the "Railyards Entry License") . The Railyards Entry License shall set forth terms and conditions for such Easement Holder Entry as Yards Parcel Owner shall deem necessary for Service Reliability and Public Safety, giving due consideration to the nature and extent of any Easement Holder Work to be undertaken in the course of such Easement Holder Entry. Such terms and conditions may address, as appropriate, such matters as means and methods of construction, coordination with railyards personnel, review of plans and logistics for the construction work, construction scheduling, payment of force account, inspections, and other matters related to Service Reliability and Public Safety; provided, that the Railyards Entry License shall not impose terms or conditions which are inconsistent with those specifically addressed in this Agreement, including, but not limited to, provisions relating to indemnification and insurance. The Railyards Entry License terms

and conditions otherwise shall generally be consistent with the terms and conditions required by the Yards Parcel Owner for comparable work in comparable work areas. Yards Parcel Owner shall issue a Railyards Entry License within thirty (30) days of request by Easement Holder or its contractor, which request shall attach a description of the nature of the Easement Holder Entry, plans and specifications for the construction work, if any, proposed to be performed and the High Line and WSY areas involved, means and methods of transporting materials and equipment through the WSY, and proposed construction scheduling. The parties shall cooperate to supply information to each other in order to finalize a Railyards Entry License upon terms and conditions described above. All Easement Holder Work undertaken pursuant to the Railyards Entry License shall be performed and conducted in compliance with the requirements of this Agreement and the Railyards Entry License, and in such manner as to avoid interference with Public Safety or Service Reliability.

(iii) Construction Period Coordination. Parcel Owners and Easement Holder acknowledge and agree that the procedures for a Parcel Owner Entry and an Easement Holder Entry (and the performance of the applicable Parcel Owner Work and Easement Holder Work) as set forth in this Agreement, will require ongoing coordination in order to ensure that the initial construction of the Facility Airspace Parcel Improvements and the restoration and conversion of the Viaduct for Public Use may mutually proceed in a timely and safe manner. Accordingly, the Parcel Owner and Easement Holder agree that during such construction periods, the parties shall, notwithstanding anything to the contrary in this Agreement, comply with the following procedures:

- (A) The applicable Parcel Owner and the Easement Holder shall designate persons (who will be either on-site or available during all business hours) and shall be authorized to make decisions on behalf of the Parcel Owner or the Easement Holder, as applicable (such person, the "Authorized Person"). Such Authorized Person shall have the power to approve any Parcel Owner Entry and/or Easement Holder Entry (and the applicable plans for Parcel Owner Work and/or Easement Holder Work), as applicable, as set forth in this Agreement.
- (B) Each party's Authorized Person (or his or her designee) shall be invited and shall attend regularly scheduled coordination meetings at which any modifications to anticipated Parcel Owner Entries and Easement Holder Entries shall be reviewed and approved, it being acknowledged and agreed that the

purpose of such coordination meetings is to facilitate expeditious responses to changes in the time and/or nature of a Parcel Owner Entry (and Parcel Owner Work) and Easement Holder Entry (and Easement Holder Work).

- (C) Any disputes as to the approval or modification of a Parcel Owner Entry (and Parcel Owner Work) and/or Easement Holder Entry (and Easement Holder Work) shall be resolved by each party's Authorized Persons. If such Authorized Persons are unable to resolve such dispute within three (3) days, then either party may refer such dispute to the president (or similar officer) of the Parcel Owner and the Commissioner of the New York City Department of Parks and Recreation (or the head of whichever agency of the City is exercising managerial control over the Viaduct) and the Deputy Mayor having oversight of such City agency. Nothing herein shall limit any rights or remedies of either party in accordance with Section 27 if such dispute is not resolved within five (5) days following such referral.

2. **Permitted Uses of High Line Easement.** The High Line Easement may be used only for the following uses ("Permitted Uses"), in compliance with the provisions of this Agreement and applicable law: (i) the operation of railroad trains or other movable railroad equipment on and over tracks located or to be located within the High Line Easement Area and such other railroad activities that are ancillary thereto, together with the right to install and use trackage, wires, conduits, cables, rails, signals and appurtenances thereto and perform any other railroad operations within the High Line Easement Area as may be required by or in furtherance of an order or ruling then in force and effect by the federal Surface Transportation Board or successor governmental authority with jurisdiction over rail use on the High Line ("Railroad Use"), and (ii) in the absence of Railroad Use, public space, public trail use or other public recreational purpose, as general municipal property, in accordance with any applicable terms, to the extent same are in force and effect, of the CITU and the TUA ("Public Use"); provided that nothing herein shall obligate Easement Holder to use the portion of the High Line that traverses over the ERY the "ERY High Line" for Public Use until the Facility Airspace Parcel Owner makes (or causes to be made) the "High Line Rehabilitation Deposit" and the "High Line Landscape Improvement Deposit" (as each such term is defined in the New York City Zoning Resolution). Whenever using the High Line Easement Area for Public Use, the High Line Easement Area shall be operated and maintained in a manner so as to qualify as "publicly accessible open space" within the meaning of Section 93-75 of the Zoning Resolution with respect to the WRY High Line and in compliance with Section 93-71 of the Zoning Resolution with respect to the ERY High Line, in each case in accordance with any applicable certified Site and Landscaping Plans, for so long as and to the extent such provisions of the Zoning Resolution (or successor provisions) and the certified Site and Landscaping Plans (or instruments implementing same) are in force and effect. Easement Holder shall undertake the design

and rehabilitation of the High Line Easement Area for Public Use (except for the condition precedent for Easement Holder's obligation in connection with the ERY High Line as set forth above in this paragraph), and shall consult on an ongoing basis with the Facility Airspace Parcel Owner in connection therewith. The High Line Easement may not be used for any purposes inconsistent with the Permitted Uses. Without limiting the foregoing limitations on Permitted Uses, it is acknowledged and agreed that the Facility Airspace Parcel Owners and the Easement Holder may enter into one or more supplemental agreements with respect to the design, construction, improvement, maintenance and support of the High Line for Public Use.

3. **Use and Access Prior to Completion of the LIRR Roof and Facilities. Interim Period Use.** From the date hereof to the earlier to occur of the following (the "Interim Period"): (i) completion by the Parcel Owners of the LIRR Roof and Facilities covering the entire Yards Parcels, or (ii) the recordation against the Yards Parcel and the Facility Airspace Parcel of an agreement among the Easement Holder and the Yards Parcel Owners declaring that the Interim Period hereunder has expired, the Easement Holder may open all or a portion of the High Line Viaduct and Spur for Public Use, upon and subject to the provisions of this Agreement. Throughout the Interim Period, the Easement Holder agrees to comply with all rules and regulations generally applicable to the Yards Parcels now in effect or which may be hereafter be promulgated by the Yards Parcel Owner(s) and provided to the Easement Holder ("Yards Parcel Rules").
- (b) **Interim Period Access.** The location of physical access points to the High Line Viaduct through the WSY during the Interim Period will be subject to approval by each affected Parcel Owner, in its sole discretion and in accordance with Section 1(c)(iii) above, provided however, that no access points shall be located within the Yards Parcel and no access points shall in any way create or afford any entry whatsoever into the Yards Parcel. Easement Holder shall be responsible for and shall take reasonable steps to enforce compliance by the general public during the Interim Period with Yards Parcel Rules.
- (c) **Interim Period Safety Requirements.**
- (i) **Interference with Public Safety and Service Reliability.** During the Interim Period, the Yards Parcel Owner(s) may, as a condition to use of the High Line Viaduct and Spur for public space, require the Easement Holder, at its sole cost and expense, to make such installations and improvements within the High Line Easement Area as the Yards Parcel Owner(s) determine may be reasonably required in order to deter and avoid interference with Public Safety and Service Reliability by members of the general public traversing the High Line Easement Area (e.g., appropriate fencing, and walkways set back from the edge of the High Line Viaduct and

Spur). Such improvements shall be subject to review by the Yards Parcel Owner(s) in the same manner as Easement Holder Work. In its review of such improvements, the Yards Parcel Owner(s) shall use reasonable efforts to accommodate the purpose of the Easement Holder's acquisition of the Viaduct and the High Line Easement for public space, including without limitation the enjoyment of views from the High Line Viaduct and Spur.

- (ii) Unsafe Conditions. Notwithstanding the foregoing, if, during the Interim Period, the Yards Parcel Owner determines that the public space of the High Line Easement poses a significant threat to Public Safety or Service Reliability, the Yards Parcel Owner will so notify the Easement Holder in writing, describing with reasonable particularity the unsafe conditions (the "Unsafe Conditions"). Such notice shall make reference to this Section 3(c)(ii) and state that Easement Holder has five (5) days to correct the Unsafe Conditions. Upon receipt of a notice of Unsafe Conditions, the Easement Holder shall have five (5) days to correct the Unsafe Conditions to the reasonable satisfaction of the Yards Parcel Owner. Should the Easement Holder fail to correct the Unsafe Conditions to the reasonable satisfaction of the Yards Parcel Owner within said five (5) day period, the Yards Parcel Owner shall have the right: (i) at its option (but with no obligation), to take any measures reasonably necessary to correct the Unsafe Conditions, including making a Parcel Owner Entry in upon or through the High Line Easement to correct such Unsafe Conditions, at the sole cost and expense of the Easement Holder; or (ii) if the Unsafe Conditions pose imminent threats to Public Safety or Service Reliability, in the judgment of the Yards Parcel Owner, to revoke the Easement Holder's right to use the Viaduct for public space until the Unsafe Conditions are corrected to the reasonable satisfaction of the Yards Parcel Owner.
- (iii) Emergency Situations. Notwithstanding the foregoing, if during the Interim Period, in the judgment of the Yards Parcel Owner, there are Unsafe Conditions that, if not rectified promptly, would have an immediate and significant adverse impact on Public Safety or Service Reliability (an "Emergency Situation"), then the Yards Parcel Owner shall have the right (but not the obligation), without providing advance notice to the Easement Holder, to repair and make safe, or cause to be repaired and made safe, the Emergency Situation at the sole cost and expense of the Easement Holder, and to close the public space use of the Viaduct until the Emergency Situation no longer exist (an "Emergency Response"). In the event that the Yards Parcel Owner undertakes an Emergency Response, the Yards Parcel Owner shall notify the Easement Holder with reasonable particularity of any work undertaken and expense

incurred in connection therewith within five (5) days of such Emergency Response.

4. (Intentionally left blank)

5. **Indemnifications.**

(a) Indemnity of Parcel Owners by Easement Holder. The Easement Holder shall indemnify, defend and hold harmless each Parcel Owner, the FASP Owners Associations (as hereinafter defined), and each of their respective subsidiaries, affiliates, agents, servants, directors, officials, officers and employees (collectively, the "Parcel Owner Indemnitees") from and against claims for any and all loss, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses which may be suffered by, imposed upon or incurred by or asserted against any of the Parcel Owner Indemnitees by a third party (a "Claim"), arising from (i) Railroad Uses, (ii) personal injury (including death) and property damage arising from Easement Holder's use, operation, development, construction, reconstruction, replacement, improvement, maintenance or repair work of, on or to the Viaduct or Viaduct Support Facilities (including, without limitation, any Easement Holder Entry and Easement Holder Work), except in any event to the extent caused by the negligence (including gross negligence) or intentional misconduct of the Parcel Owner Indemnitee, and provided further that, with respect to use and operation, Easement Holder shall have no obligation under this paragraph with respect to claims by third parties to the extent arising out of actions of members of the general public or other persons or entities who are neither agents nor employees of Easement Holder nor under contract with an Easement Holder in connection with the Viaduct or the Viaduct Support Facilities, and (iii) the storage, transportation, disposal, spill, emission, leaking, pumping, injection, deposit, discharge, disposal, leaching, migration, release or threatened release by Easement Holder or any of its employees, guests, contractors, subcontractors, representatives or agents of any Hazardous Materials (as hereinafter defined) in, on or from the WSY (including without limitation in connection with any Easement Holder Work), or any Claim against any Parcel Owner Indemnitees concerning or related to the existence of any Hazardous Materials in or on the Viaduct or Viaduct Support Facilities; provided, that in no event shall Easement Holder be obligated to defend, hold harmless or indemnify any Parcel Owner for any claim arising out of Parcel Owner Work or any act or omission of any Parcel Owner Indemnitee. For purposes of this paragraph "Hazardous Materials" means any waste, pollutant, hazardous substance, hazardous material, hazardous waste, special waste, solid waste, petroleum or petroleum-derived substance or waste, asbestos, polychlorinated biphenyls ("PCBs"), or any constituent of any such substance or waste, which is defined in or regulated by any Environmental Law. For purposes of this paragraph, Environmental Law shall mean any of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C., §§9601 et seq., the National Environmental Policy Act of 1969, 42 U.S.C., §§4321 et seq., the Energy Policy and Conservation Act, 42 U.S.C., §6362, the Coastal Zone Management

Act of 1972, 16 U.S.C., §§1451 et seq., Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 59 FR 7629, February 11, 1994), the Resource Conservation and Recovery Act, 42 U.S.C., §§6901 et seq., the Toxic Substances Control Act, 15 U.S.C., §§2601 et. seq., the Federal Water Pollution Control Act, 42 U.S.C., §§1251 et. seq., the Hazardous Materials Transportation Act, 42 U.S.C. §§5101 et. seq., or the New York Environmental Conservation Law, §§1-0101 et. seq., all of which as have been amended or may be amended in the future or under any other federal, state or local law, statute, rule, regulation or common law theory now or hereafter in effect, and designed to protect human health or the environment.

(b) Indemnification of Easement Holder. Each Parcel Owner, severally and not jointly and with respect to its own Parcel, shall indemnify, defend and hold harmless the Easement Holder, its subsidiaries, affiliates, agents, servants, directors, officials, officers and employees, its instrumentalities (including without limitation New York City Economic Development Corporation) and their subsidiaries, affiliates, agents, servants, directors, officials, officers and employees, and any conservancy, caretaker or custodian with which the City may contract and its subsidiaries, affiliates, agents, servants, directors, officials, officers and employees with, designate or appoint to improve, maintain, promote or manage the Viaduct and Viaduct Support Facilities, including, but without limitation, Friends of the High Line, Inc. (the "Easement Holder Indemnitees"), from and against any and all Claims by third parties arising from the following matters, acts or omissions by or on behalf of such Parcel Owner or its officials, officers, agents, or employees (i) the development, construction, reconstruction, replacement, improvement, maintenance or repair work of, on or to the respective Parcel Owner's Parcel (including without limitation any Parcel Owner Entry or Parcel Owner Work but in no event extending to use and operations related to rail service on the Yards Parcels), or relating to any such work by such Parcel Owner, except to the extent caused by the negligence (including gross negligence) or intentional misconduct of the Easement Holder Indemnatee, and provided further that, with respect to use and operation, no Parcel Owner shall have any obligation under this paragraph with respect to claims by third parties to the extent arising out of actions of members of the general public or other persons or entities who are neither agents nor employees of Parcel Owner nor under contract with the indemnifying Parcel Owner in connection with such Parcel Owner's Parcel), or (ii) the storage, transportation, disposal, spill, emission, leaking, pumping, injection, deposit, discharge, dispersal, leaching, migration, release or threatened release by Parcel Owner or any of its employees, guests, contractors, subcontractors, representatives or agents of any Hazardous Materials in connection with any Parcel Owner Work; provided, that in no event shall any Parcel Owner be obligated to defend, hold harmless or indemnify any Easement Holder Indemnatee for any claim arising out of Easement Holder Work or any act or omission of any Easement Holder Indemnatee.

(c) Conditions of Indemnity. The indemnifications contained in this Agreement are subject to the following conditions: the Parcel Owner Indemnitees or the Easement Holder Indemnitees, as appropriate, (either of the Parcel Owner Indemnitees or the Easement Holder Indemnitees, as appropriate, are referred to as "Indemnitees") shall (i) promptly notify party liable for indemnification (the "Indemnitor") of any claim, action or proceeding for which it seeks indemnification; (ii) consent to the reasonable settlement of any claim, action or proceeding which is fully covered by the indemnification provided by Indemnitor, and does not otherwise create liability to the Indemnatee not covered by the indemnification; and (iii) without incurring any liability or material out-of-pocket expenses, reasonably cooperate with the Indemnitor and its designees and insurers in connection with any claim, action or proceeding. Each Parcel Owner's and Easement Holder's obligation to defend, indemnify and hold an Indemnatee harmless shall not be limited in any way by the Parcel Owner's or Easement Holder's (respectively) obligations to obtain and maintain insurance under this Agreement.

6. Annual Closure. Each Parcel Owner shall have the right, upon reasonable advance notice, to close each (private) sidewalk, driveway, ramp, stairway and exit one day each calendar year, for the purpose of preventing any public easement over and through each such (private) sidewalk, driveway, ramp, stairway or exit from arising. Nothing in this Agreement shall be construed in any way to permit closure of any access/exit facilities to and from public streets and sidewalks directly to the Viaduct which do not traverse or encroach upon any part of the WSY.

7. Restoration of Rail Services. Each Parcel Owner covenants and agrees not to petition the federal Surface Transportation Board or successor governmental authorities with jurisdiction over rail use on the High Line and the Spur for restoration of rail service over the High Line and/or the Spur. Easement Holder shall promptly provide notice to the Parcel Owners upon its receipt of any petition or application for the restoration of any such rail service (except to a Parcel Owner which files or serves such petition). Easement Holder and each Parcel Owner shall have all rights and remedies available at law or equity to enforce the provisions of this Section, including without limitation, seeking an injunction enjoining a threatened breach of this Section.

8. Easement Holder Insurance

- (a) Requirements. The Easement Holder shall provide or cause to be provided, and keep in force, at its sole cost and expense, the required insurance described in Exhibit D attached hereto. The Easement Holder shall notify the Parcel Owners of any of any claims of which the Easement Holder becomes aware, as more particularly provided in Exhibit D.
- (b) OCIP/CCIP. Easement Holder may provide the Worker's Compensation, Disability, Employer's Liability and/or Commercial General Liability insurance coverage required under this Agreement through a Contractor Controlled Insurance Program ("CCIP") or an Owner Controlled Insurance Program

("OCIP") subject to obtaining consent of the party for whose benefit the insurance coverage is required, which consent shall not be unreasonably withheld. If the Easement Holder elects to provide such coverages through a CCIP or an OCIP, and the party for whose benefit the insurance coverage is required consents thereto in writing, said coverages shall in all respects meet the requirements set forth in this Agreement.

9. Maintenance, Repair and Restoration

- (a) Easement Holder to Maintain, Repair and Restore. The Easement Holder shall maintain the Viaduct and Viaduct Support Facilities in good order and repair and in compliance with applicable laws, at its sole cost and expense, and shall promptly repair or restore any damages or conditions relating thereto that could, individually or in the aggregate, if not repaired, cause injury (including death) or damage to persons or property, or materially adversely affect Public Safety or Service Reliability, or otherwise have a material adverse effect on the use and enjoyment of the WSY. Subject to restoration of Railroad Use, all repairs to the Viaduct shall be in compliance with the certified Site and Landscaping Plan (for as long as same is in force and effect) and all applicable legal requirements and shall preserve the use of the Viaduct for Public Use in accordance with Section 2 above.
- (b) Self-Help by Parcel Owner. In the event that the Easement Holder fails to maintain or repair Viaduct and Viaduct Support Facilities in the condition required by Section 9(a), any Parcel Owner may, if such condition remains uncured after thirty (30) days notice and demand to the Easement Holder (or such shorter period of time as shall be appropriate in order to prevent imminent injury (including death) or damage to persons or property), which notice shall make reference to this Section 9(b) of this Agreement and the thirty (30) day (or shorter) period set forth herein, undertake such maintenance, repair and restoration at the sole cost and expense of the Easement Holder, and the Easement Holder shall promptly reimburse such Parcel Owner for all such expenditures made by such Parcel Owner following the receipt of a reasonably detailed invoice therefor.

10. Covenant Not to Map. Subject to applicable law (including without limitation Section 25-102 of the New York City Administrative Code), the Easement Holder covenants not to institute or support proceedings to map as a park any portion of the High Line Easement Area or Viaduct without the prior written consent of the Yards Parcel Owners and the Facility Airspace Parcel Owners, to be granted or withheld in their sole and absolute discretion.

11. CITU or TUA Termination. The Parcel Owners covenant and stipulate that the surrender or other termination of the CITU and/or the TUA between the City and CSXT and/or the issuance of an order of abandonment or other order to similar effect by the federal Surface Transportation Board or its successor-in-function shall not in any way impair, diminish, void, invalidate, extinguish, terminate or otherwise affect this

Agreement (including, without limitation, all rights and obligations of Easement Holder to utilize the High Line Easement for Public Use); provided that nothing herein shall limit any rights or remedies of any Parcel Owner on account of any default by Easement Holder of any of its obligations hereunder or any other agreement between a Parcel Owner and the Easement Holder (which may include other parties) relating to the High Line and/or the Spur.

12. Amendment and Restatement of Easement. This Agreement is intended to amend and restate the Original High Line Easement in its entirety. Following the execution of this Agreement, all rights, interests, entitlements and obligations of the Parcel Owners and Easement Holder with respect to the High Line Easement shall be solely as set forth in this Agreement, and any rights of the Easement Holder with respect to the WSY set forth in any other documents or agreements, including without limitation, those documents and agreements listed on Exhibit B, shall be null and void and no longer have any force and effect.

13. Subordination. The ERY Declaration, the WRY Declaration, the ERY Balance Lease, the Tower C Lease, and the WRY Lease are hereby declared to be subject and subordinate to this Agreement; provided, however, that nothing herein shall be deemed to amend, modify or otherwise affect any rights, liabilities or obligations that may benefit or bind the MTA and/or LIRR, on the one hand, and ERY Tenant and/or WRY Tenant and/or Tower C Tenant, on the other hand (or otherwise as may run among the Parcel Owners) as set forth in or contemplated by any of the foregoing agreements.

14. Proprietary Capacity. Except as otherwise expressly provided in this Agreement, The Yards Parcel Owner and Easement Holder are entering into this Agreement in their proprietary, and not regulatory, capacity. All rights and obligations under this Agreement are subject to applicable law and regulation of all governmental authorities of competent jurisdiction.

15. Donor Agreement; Signage. Easement Holder shall not locate (or permit the location of) any "advertising signs", as such term is defined in the Zoning Resolution, within the High Line Easement Area, on the exterior of the Viaduct or on any of the Viaduct Support Structures, it being agreed, however, that signage recognizing donations to be used in connection with the High Line (including without limitation those under the Donor Recognition Agreement) do not constitute "advertising" signage and shall be permitted, provided that with respect to donor recognition signage other than that contemplated under the Donor Recognition Agreement are of a scale and design similar to other donor recognition signage then existing on the High Line.

16. Separability. If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this agreement, or the application of such term or provisions to persons or circumstances to which it is valid or enforceable, shall not be affected thereby, and each term and provision of this agreement shall be valid and enforced to the extent permitted by law.

17. **Recording.** This Agreement shall be recorded in the Office of the City Register, New York County, promptly following the execution and delivery hereof, by the Easement Holder at the Easement Holder's sole cost and expense (if any).

18. **Captions; Plurals; Gender.** Section headings, captions, titles and exhibit headings to this Agreement are for convenience and reference only, and are in no way to be construed as defining, limiting, or modifying the scope or intent of the various provisions of this agreement. The plural shall be substituted for the singular, and the singular for the plural, where appropriate, and the words of any gender shall mean and include any other gender.

19. **Successors and Assigns; Applicable Parcel Owner.**

(a) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Easement Holder and the Parcel Owners, and their respective successors and assigns. Except as expressly set forth in this Agreement, this Agreement does not and is not intended to confer any benefits upon, or create any rights in favor of, any other persons. Notwithstanding the foregoing, prior to the restoration of Railroad Use, the City may not assign, convey or otherwise transfer its rights and obligations as Easement Holder hereunder to any other person or entity other than to an instrumentality of the City of New York or to the State of New York or any instrumentality or public benefit corporation thereof; provided that no such transfer shall be permitted if the transferee shall be unable to comply with all of the obligations of the Easement Holder hereunder. Provided that the transferee as described above executes and delivers an instrument, in recordable form, a copy of which is delivered to the Parcel Owners, by which the transferee expressly assumes the obligations accruing under this Agreement from and after the date of transfer, the City shall have no liability under this Agreement for obligations accruing from and after the date of such transfer.

- (b) Lease of Facility Airspace Parcel. For so long as any lease of the Facility Airspace Parcels (or any portion thereof) from MTA, as landlord, to ERY Tenant, WRY Tenant, Tower C Tenant or another person, as tenant, is in effect as contemplated by the ERY Balance Lease, the Tower C Lease, and/or the WRY Agreement to Enter into Lease, the respective tenant(s) under such lease(s), and not MTA as fee owner, shall be deemed to be the Facility Airspace Parcel Owner with respect to the premises demised by such lease (such demised premises, a "Parcel") and shall have the exclusive authority to act as a Facility Airspace Parcel Owner without the consent of the MTA for all purposes of this Agreement. In addition, for so long as the WRY Agreement to Enter into Lease is in full force and effect, any consent or approval by the MTA under this Agreement as Facility Airspace Parcel Owner shall be conditioned on the delivery of written consent by the WRY Tenant, provided that such consent or approval by the WRY Tenant shall be subject to the conditions, standards and limitations for approval or consent set forth in this Agreement for a Parcel Owner with respect to such matters.
- (c) Applicable Parcel Owner. Subject to paragraph (b) above of this Section 19, wherever a right or obligation, including right of consent, in this Agreement is said to be that of a Parcel Owner, all Parcel Owners whose Parcels are physically affected by the matter in question shall be entitled to exercise such right or perform such obligation, and no Parcel Owner whose Parcel is not physically affected, or the use and enjoyment of its Parcel is not affected, by the matter in question, shall be entitled to exercise such right or perform such obligation. Where more than one Parcel Owner is entitled to exercise a right hereunder, including the right to consent to a matter in question, the consent of all Parcel Owners so entitled shall be obtained before such right or consent shall be effective. Nothing herein shall limit the rights of a Parcel Owner to indemnification under Section 5 of this Agreement, which shall be applicable to all Parcel Owners.
- (d) Facility Airspace Parcel Owners' Associations. The Easement Holder acknowledges that the ERY Facility Airspace Parcel Owner intends to create an owners' association for the ERY Facility Airspace Parcel (the "ERY FASP Owners Association") and the WRY Facility Airspace Parcel Owner intends to create an owners' association for the WRY Facility Airspace Parcel (the "WRY FASP Owners Association"), and together with the ERY FASP Owners Association, each a "FASP Owners Association"). The Easement Holder shall accept the exercise of any rights or remedies by the ERY FASP Owners Association on behalf of the ERY Facility Airspace Parcel Owner and by the WRY FASP Owners Association on behalf of the WRY Facility Airspace Parcel Owner, subject to the terms, conditions and covenants set forth in this Agreement that apply to the respective Facility Airspace Parcel Owner. The ERY FASP Owners Association shall be an express third party beneficiary of all rights of the ERY Facility Airspace Parcel Owner hereunder, and the WRY FASP Owners Association shall be an express third party beneficiary of all rights of the WRY Facility Airspace Parcel Owner hereunder. Upon its formation, each FASP

Owners Association shall deliver written notice thereof to the Easement Holder, and from the date of such notice, the Easement Holder shall deliver to the ERY FASP Owners Association a copy of any notice delivered to the ERY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the ERY) and to the WRY FASP Owners Association a copy of any notice delivered to the WRY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the WRY).

20. Exhibits. All Exhibits attached hereto are incorporated by reference and hereby made a part hereof.

21. No Amendment. Neither this Agreement nor any provision hereof may be changed, modified, amended, supplemented, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, modification, amendment, supplement, waiver, discharge or termination is sought.

22. No Waivers. The failure of the Easement Holder or a Parcel Owner to seek redress for violations or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof and the Easement Holder or such Parcel Owner, as the case may be, shall have all remedies provided herein and under applicable law with respect to any subsequent act which originally would have constituted a violation or default hereunder.

23. Survival. Subject to and except as limited by the other terms of this Agreement, the obligations, undertakings, duties, and covenants of each of the Easement Holder and the Parcel Owners shall survive the delivery and recording of this Agreement.

24. Notices. Any notice, request, consent or other communication under this Agreement ("Notice" or "notice") shall be in writing and sent by registered or certified Mail, return receipt requested, or by hand delivery, express mail or overnight delivery with a receipt service. The date such notice shall be deemed to have been given shall be the date of receipt, the first calendar day after the date sent by courier, express or overnight ("next day delivery"), or the third calendar day after the postmark on the envelope if mailed, whichever occurs first. Notices to the Easement Holder shall be sent to:

The City of New York
Department of Parks and Recreation
The Arsenal
Central Park
New York, New York 10021

with a copy to:

New York City Law Department
100 Church Street
New York, New York 10007

Attn: Chief, Economic Development Division

Notices to the Yards Parcel Owners shall be sent to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

and to:

Paul, Weiss, Rifkind Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Meredith J. Kane, Esq.

Notices to the ERY Facility Airspace Parcel Owner shall be sent to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

and to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attn: Meredith J. Kane, Esq.
With a copy to:

ERY Tenant LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Mr. Jeff T. Blau and Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

and to:

Legacy Yards Tenant LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Mr. Jeff T. Blau and Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

Notices to the WRY Facility Airspace Parcel Owner shall be sent to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: Director of Real Estate

With a copy to:

Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017
Attn: General Counsel

and to:

Paul, Weiss, Rifkind Wharton & Garrison LLP

1285 Avenue of the Americas
New York, New York 10019
Attn: Meredith J. Kane, Esq.

With a copy to:

WRY Tenant LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Mr. Jeff T. Blau and Mr. L. Jay Cross

and to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in the manner described in this Section of the Agreement. Any counsel designated above or any replacement counsel is hereby authorized to give notices hereunder on behalf of its client.

Upon the creation of one or more Severed Parcels, the ERY Facility Airspace Parcel Owner and/or the WRY Facility Airspace Parcel Owner, as applicable, shall notify the Easement Holder and the Yards Parcel Owner of the creation of such Severed Parcel, the Severed Parcel Owner thereof and the persons or entities entitled to receive notices hereunder. Upon the formation of a FASP Owners Association, the applicable Facility Airspace Parcel Owner shall deliver written notice thereof to the Easement Holder. Following receipt of such notice, the Easement Holder shall deliver to the ERY FASP Owners Association a copy of any notice delivered to the ERY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the ERY) and to the WRY FASP Owners Association a copy of any notice delivered to the WRY Facility Airspace Parcel Owner (or a Severed Parcel Owner on the WRY).

In the event that the MTA notifies the Easement Holder that the ERY Balance Lease, the Tower C Lease, and/or the WRY Agreement to Enter into Lease has been terminated, then the notice parties for the ERY Facility Airspace Parcel Owner, any Severed Parcel Owner, and/or the WRY Facility Airspace Parcel Owner, as applicable, shall be the same as for the Yards Parcel Owner.

25. Due Authorization; Complete Agreement. The persons executing this Agreement on behalf of each of the Easement Holder and the Parcel Owner represent and warrant, each for himself or herself and the respective principal parties, that each has been duly authorized to execute this Agreement for and on behalf of the Easement Holder and the Parcel Owner, respectively. All understandings and agreements heretofore made between the parties hereto relating to the particular subject matter hereof are merged in

this Agreement, which alone fully and completely expresses the agreement between the Easement Holder and the Parcel Owner on such matters.

26. **Exculpation**. Notwithstanding anything to the contrary herein, in no event shall any of the members, managers, affiliates, trustees, directors, officers, officials, employees, agents or servants of Easement Holder or any Parcel Owner have any liability (personal or otherwise) under or by reason of this Agreement or any of the matters contemplated by this Agreement or shall be subject to levy, execution or other enforcement procedure for the satisfaction of any party's remedies hereunder.

27. **Enforcement**. In the event of any breach or violation or threatened breach or violation by any party of the terms and conditions provided herein, the non-breaching parties will have, in addition to the right to claim damages, the right to enjoin such breach or violation or threatened breach or violation or to seek specific performance in a court of competent jurisdiction. In no event shall any party or any person acting by or on behalf of a party be liable for consequential or punitive damages to any person hereunder. Each party hereby waives all rights to trial by jury in any action or proceeding arising out of this Agreement.

28. **Estoppel Certificates**. Whenever requested upon at least ten (10) days' prior written notice from another party (or its designee, including a mortgagee or potential mortgagee), the requested party shall furnish to such requesting party or its designee a written statement, setting forth: (a) whether this Agreement is in full force and effect; (b) the extent to which this Agreement has been modified, whether by instrument of record or otherwise; (c) the extent to which, to the best of the certifying party's knowledge, any other party is in default under this Agreement, which default remains uncured; and (d) any other information known to the certifying party and reasonably requested by the requesting party. Such statement may be relied upon by the requesting party and said designee.

29. **Governing Law**. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of New York, without regard to principles of conflicts of laws and rules of such state.

30. **Further Assurances**. The Easement Holder and the Parcel Owners shall execute and deliver such further documents, and perform such further acts, as may be reasonably required to carry out the intent and purposes of this Agreement and to otherwise facilitate the development, use and enjoyment of the WSY and Viaduct as contemplated hereunder.

31. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

32. **No Right to Utilize Development Rights**. Notwithstanding anything to the contrary herein, in no event does this Agreement grant the Easement Holder the right to utilize or convey any Development Rights (as defined below) appurtenant to the WSY, and this Agreement does not provide the Easement Holder with any right, title or interest

in any such Development Rights. Easement Holder hereby agrees that it shall not make any structural additions to the Viaduct that would utilize any Development Rights. Accordingly, it is intended that the Easement Holder not be deemed a "party in interest" as such term is defined in Section 12-10 of the Zoning Resolution with respect to the WSY in its capacity as Easement Holder hereunder or otherwise in connection with the CITU or TUA, and the Easement Holder hereby waives any rights it may have to execute any agreements or otherwise consent to any actions that would be required if it were deemed to be a "party in interest". Without limiting the foregoing, the Easement Holder shall, upon the request of a Parcel Owner, promptly execute at no cost to such Parcel Owner any documents confirming the foregoing, and, if required, consenting to (or waiving its right to consent to) any agreements, actions, declarations or other documents to which the consent of a "party in interest" is required; provided that such documents do not violate this Agreement.

For the purposes of this Agreement, "Development Rights" shall mean the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop such zoning lot by erecting thereon a structure or structures with (i) a total floor area determined by multiplying the area of the zoning lot by the maximum allowable floor area ratio for structures in the zoning district or districts in which such zoning lot is located, and (ii) any bulk, density and other development rights permitted under the Zoning Resolution, and (iii) any "bonus" Development Rights permitted under the Zoning Resolution.

33. Status of WSY Development and Viaduct. It is understood and acknowledged that this Agreement is being executed prior to the full development of plans (a) by the Easement Holder for the conversion of the Viaduct to Public Use as contemplated by this Agreement, and (b) by the Parcel Owners (including ERY Tenant, WRY Tenant, Tower C Tenant, their respective affiliates and future WSY Occupants) for the construction of the LIRR Roof and Facilities, the Facility Airspace Improvements, the Site and Landscaping Plans and the general operations of the WSY (including, without limitation, the location of utilities, sewers and related facilities, pedestrian and vehicular access, etc.). Without limiting anything in this Agreement, the parties agree to cooperate in good faith and with reasonable diligence to facilitate the development of the WSY and the Viaduct as contemplated by this Agreement and in recognition of (i) the significant financial investment by Easement Holder, Parcel Owners, WSY Occupants, and their respective partners, lenders, affiliates and investors, (ii) the mutual benefit that the development of the WSY and the Viaduct shall have to all parties and the City as a whole, and (iii) the covenants, obligations and liabilities that Parcel Owners and Easement Holder may have with third parties to timely perform construction activities or otherwise provide for the use and enjoyment of the WSY and the Viaduct.

[The balance of this page is blank; the next pages are signature pages for each party.]

Exhibit A

LEGAL DESCRIPTION OF THE WEST SIDE YARDS

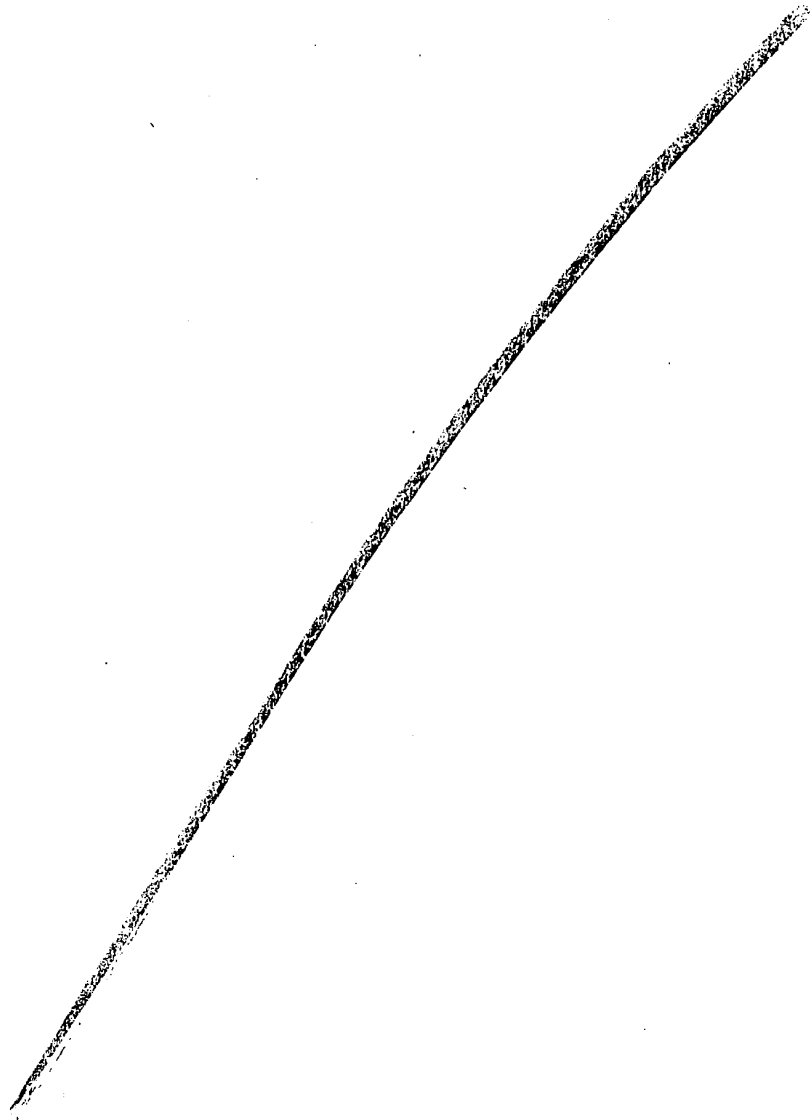
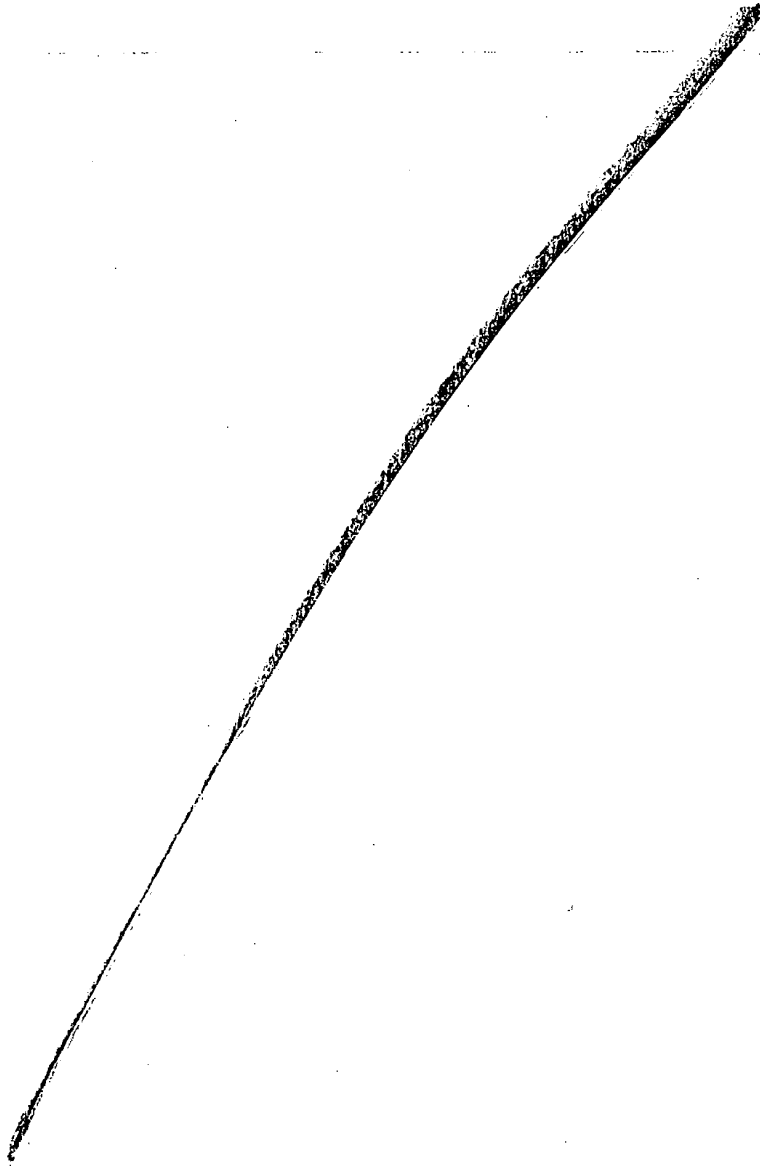


Exhibit A-1

LEGAL DESCRIPTION OF THE ERY PARCEL



Legal Description of Yards Parcel

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

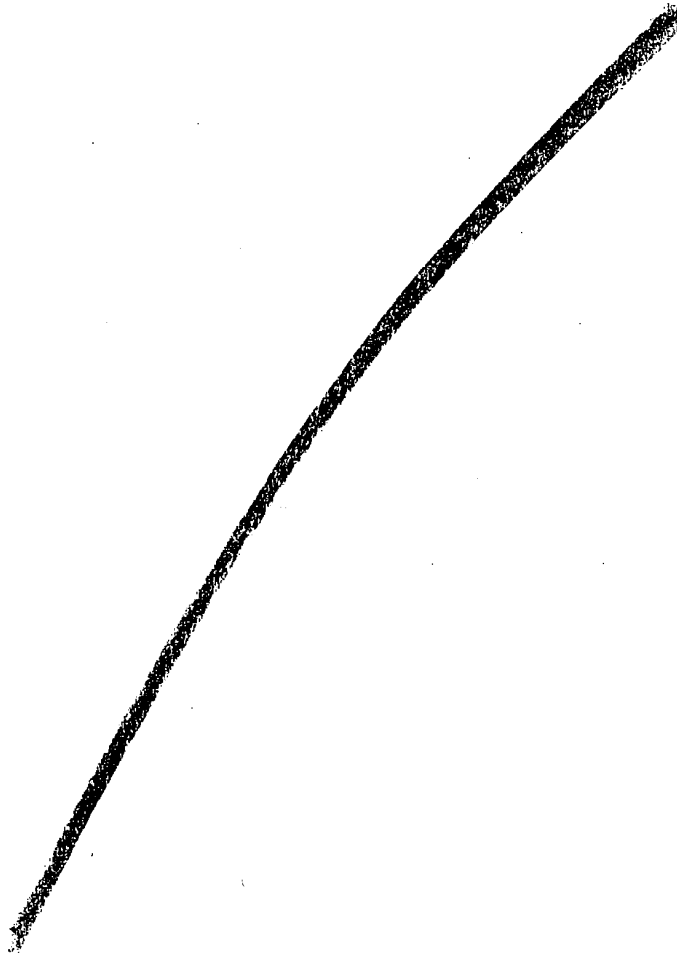
Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the westerly line of Tenth Avenue (100' R.O.W.); running thence

1. Along said westerly line Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 495.43 feet to a point; thence
2. South $73^{\circ}49'29''$ West, a distance of 41.60 feet to a point; thence
3. South $75^{\circ}34'14''$ West, a distance of 20.66 feet to a point; thence
4. South $80^{\circ}40'55''$ West, a distance of 40.63 feet to a point; thence
5. North $89^{\circ}52'13''$ West, a distance of 350.99 feet to a point; thence
6. North $89^{\circ}14'46''$ West, a distance of 96.54 feet to a point; thence
7. South $82^{\circ}02'38''$ West, a distance of 87.84 feet to a point; thence
8. South $89^{\circ}58'48''$ West, a distance of 165.46 feet to a point on the easterly line of Eleventh Avenue (100' R.O.W.); thence
9. Along said easterly line of Eleventh Avenue, North $00^{\circ}03'07''$ East, a distance of 529.62 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
10. Along said southerly line of West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 416,020 S.F./9.550 acres, more or less.

Exhibit A-2

LEGAL DESCRIPTION OF THE WRY PARCEL



Legal Description of Yards Parcel

All of the lands below an upper limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

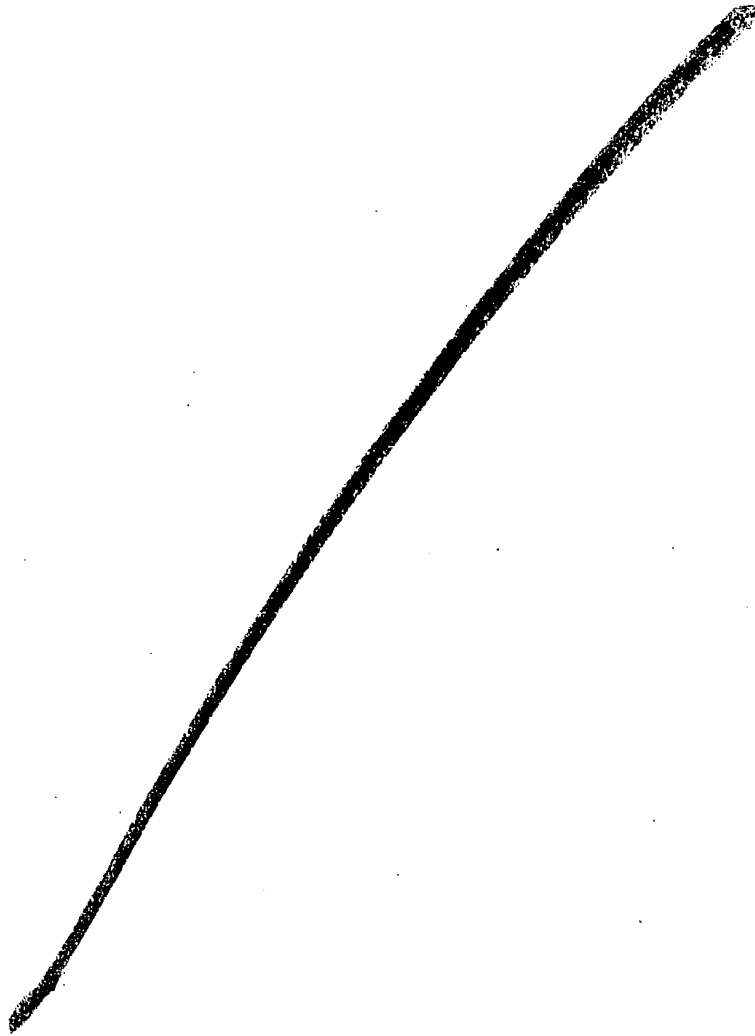
Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence
2. Along said westerly line of Eleventh Avenue, South $00^{\circ}03'07''$ West, a distance of 538.26 feet to a point; thence
3. North $89^{\circ}49'42''$ West, a distance of 439.40 feet to a point; thence
4. North $69^{\circ}32'56''$ West, a distance of 61.90 feet to a point; thence
5. North $89^{\circ}57'45''$ West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence
6. Along said easterly line of Twelfth Avenue, North $00^{\circ}03'07''$ East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Exhibit A-3

LEGAL DESCRIPTION OF THE ERY YARDS PARCEL



Facility Airspace Parcel: Terra Firma

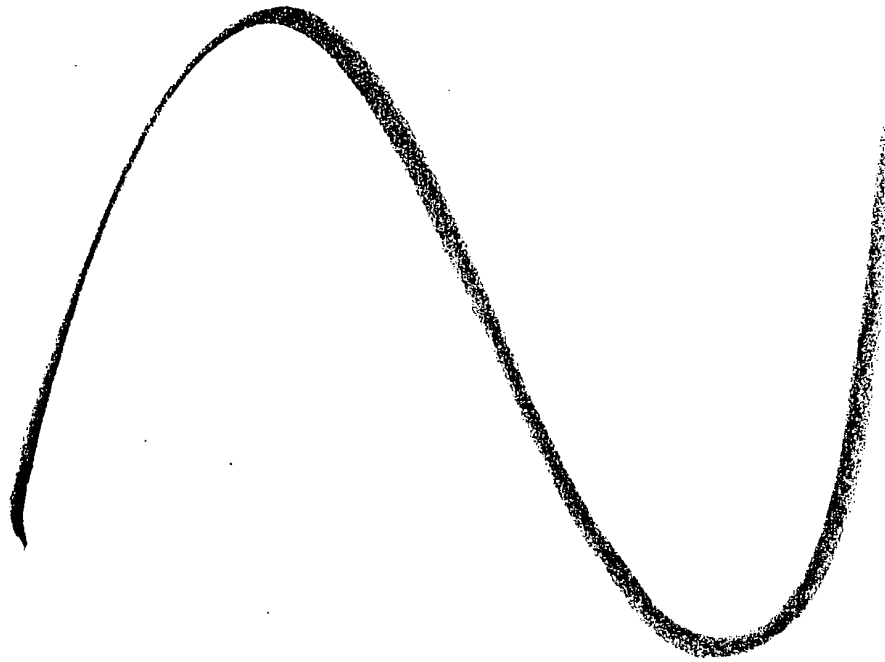
Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North $89^{\circ}56'53''$ West, a distance of 800.00 feet to a point formed by the intersection of the said northerly line of West 30th Street and the easterly line of Eleventh Avenue (100' R.O.W.); thence
2. Along said easterly line of Eleventh Avenue, North $00^{\circ}03'07''$ East, a distance of 182.50 feet to a point; thence
3. Leaving Eleventh Avenue, South $89^{\circ}56'53''$ East, a distance of 120.95 feet to a point; thence
4. North $78^{\circ}45'38''$ East, a distance of 49.37 feet to a point; thence
5. South $89^{\circ}56'53''$ East, a distance of 630.64 feet to a point in the aforementioned westerly line of Tenth Avenue; thence
6. Along said westerly line of Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 152,330 square feet or 3.497 acres, more or less.

Exhibit A-4

LEGAL DESCRIPTION OF THE ERY FACILITY AIRSPACE PARCEL



Legal Description of Facility Airspace Parcel

Facility Airspace Parcel: Airspace

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

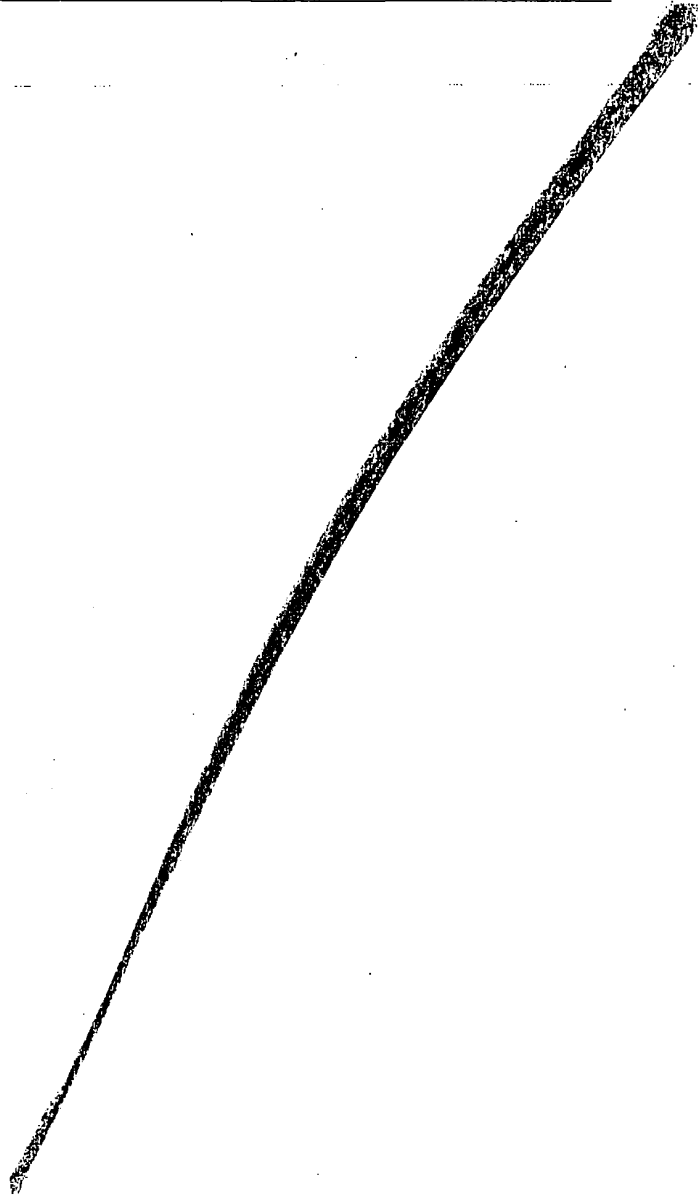
Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the westerly line of Tenth Avenue (100' R.O.W.); running thence

1. Along said westerly line Tenth Avenue, South $00^{\circ}03'07''$ West, a distance of 495.43 feet to a point; thence
2. South $73^{\circ}49'29''$ West, a distance of 41.60 feet to a point; thence
3. South $75^{\circ}34'14''$ West, a distance of 20.66 feet to a point; thence
4. South $80^{\circ}40'55''$ West, a distance of 40.63 feet to a point; thence
5. North $89^{\circ}52'13''$ West, a distance of 350.99 feet to a point; thence
6. North $89^{\circ}14'46''$ West, a distance of 96.54 feet to a point; thence
7. South $82^{\circ}02'38''$ West, a distance of 87.84 feet to a point; thence
8. South $89^{\circ}58'48''$ West, a distance of 165.46 feet to a point on the easterly line of Eleventh Avenue (100' R.O.W.); thence
9. Along said easterly line of Eleventh Avenue, North $00^{\circ}03'07''$ East, a distance of 529.62 feet to a point formed by the intersection of said easterly line of Eleventh Avenue and the aforementioned southerly line of West 33rd Street; thence
10. Along said southerly line of West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 416,020 S.F./9.550 acres, more or less.

Exhibit A-5

LEGAL DESCRIPTION OF THE WRY YARDS PARCEL



Legal Description of Facility Airspace Parcel Terra Firma

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

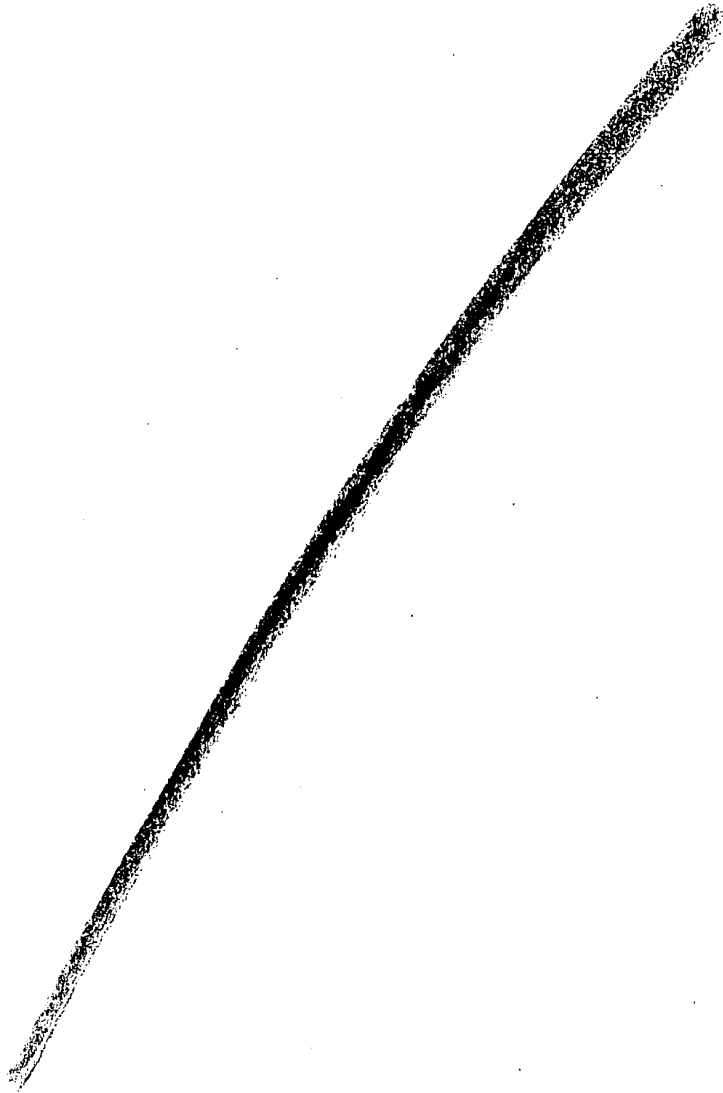
Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North $00^{\circ}03'07''$ East, a distance of 196.65 feet to a point; thence
2. South $89^{\circ}57'45''$ East, a distance of 302.58 feet to a point; thence
3. South $69^{\circ}32'56''$ East, a distance of 61.90 feet to a point; thence
4. South $89^{\circ}49'42''$ East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence
5. Along said westerly line of Eleventh Avenue, South $00^{\circ}03'07''$ West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence
6. Along said northerly line of west 30th Street, North $89^{\circ}56'53''$ West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

Exhibit A-6

LEGAL DESCRIPTION OF THE WRY FACILITY AIRSPACE PARCEL



Facility Airspace Parcel: Airspace Above Lower Limiting Plane

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said West 33rd Street, South $89^{\circ}56'53''$ East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South $00^{\circ}03'07''$ West, a distance of 538.26 feet to a point; thence

3. North $89^{\circ}49'42''$ West, a distance of 439.40 feet to a point; thence

4. North $69^{\circ}32'56''$ West, a distance of 61.90 feet to a point; thence

5. North $89^{\circ}57'45''$ West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North $00^{\circ}03'07''$ East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Exhibit A-7

LEGAL DESCRIPTION OF THE TOWER C LEASE PREMISES

Basement level and below:

All of the lands at or below an upper limiting plane of elevation 12.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 589.42 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 77.67 feet to a point; thence
3. North 89°56'53" West, a distance of 112.00 feet to a point; thence
4. North 00°03'07" East, a distance of 104.83 feet to a point; thence
5. South 89°56'53" East, a distance of 22.37 feet to a point; thence
6. North 78°45'38" East, a distance of 49.37 feet to a point; thence
7. South 89°56'53" East, a distance of 630.64 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
8. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 125,640 Square Feet/2.884 acres, more or less.

Street Level:

All of the lands above a lower limiting plane of elevation 12.00 feet and at or below an upper limiting plane of elevation 29.00 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 579.42 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 20.06 feet to a point; thence
3. South 89°56'53" East, a distance of 8.37 feet to a point; thence
4. North 00°03'07" East, a distance of 30.67 feet to a point; thence

5. North 89°56'53" West, a distance of 1.80 feet to a point; thence
6. North 00°03'07" East, a distance of 5.03 feet to a point; thence
7. North 89°56'53" West, a distance of 0.50 feet to a point; thence
8. North 00°03'07" East, a distance of 6.60 feet to a point; thence
9. South 89°56'53" East, a distance of 2.33 feet to a point; thence
10. North 00°03'07" East, a distance of 18.31 feet to a point; thence
11. North 36°42'17" West, a distance of 27.85 feet to a point; thence
12. North 89°56'53" West, a distance of 10.32 feet to a point; thence
13. North 00°03'07" East, a distance of 31.86 feet to a point; thence
14. North 89°56'53" West, a distance of 45.42 feet to a point; thence
15. North 00°03'07" East, a distance of 12.90 feet to a point; thence
16. North 89°56'53" West, a distance of 37.04 feet to a point; thence
17. North 00°03'07" East, a distance of 34.75 feet to a point; thence
18. South 89°56'53" East, a distance of 1.41 feet to a point; thence
19. North 78°45'38" East, a distance of 49.37 feet to a point; thence
20. South 89°56'53" East, a distance of 630.64 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
21. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 116,517 Square Feet/2.675 acres, more or less.

Mezzanine Level:

All of the lands above a lower limiting plane of elevation 29.00 feet and at or below an upper limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 579.42

feet to a point; thence

2. Leaving West 30th Street, North 00°03'07" East, a distance of 20.06 feet to a point; thence
3. South 89°56'53" East, a distance of 8.37 feet to a point; thence
4. North 00°03'07" East, a distance of 35.70 feet to a point; thence
5. South 89°56'53" East, a distance of 3.21 feet to a point; thence
6. North 00°03'07" East, a distance of 136.41 feet to a point; thence
7. South 89°56'53" East, a distance of 567.83 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
8. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 109,465 Square Feet/2.513 acres, more or less.

Plaza level and above:

All of the lands above a lower limiting plane of elevation 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the westerly line of Tenth Avenue (100' R.O.W.), and the northerly line of West 30th Street (60' R.O.W.); running thence

1. Along said northerly line of West 30th Street, North 89°56'53" West, a distance of 416.00 feet to a point; thence
2. Leaving West 30th Street, North 00°03'07" East, a distance of 192.17 feet to a point; thence
3. South 89°56'53" East, a distance of 416.00 feet to a point on the aforementioned westerly line of Tenth Avenue; thence
4. Along said westerly line of Tenth Avenue, South 00°03'07" West, a distance of 192.17 feet to the Point of Beginning.

Encompassing an area of 79,941 Square Feet/1.835 acres, more or less.

Exhibit B

SOURCES OF THE ORIGINAL HIGH LINE EASEMENT

501-57 West 30th St. Block 702 Lot 50

Easement Source: Deed from The Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Eastern Starr Associates, dated January 30, 1981, and recorded February 6, 1981, in Reel 554 Page 324, as corrected by Correction Deed from Grantor to Eastern Starr Associates dated March 2, 1983, and recorded March 24, 1983 in Reel 674, Page 1917

(No Street Address): South side Block 702 Lot 1
32nd St. Between 10th and 11th Aves.

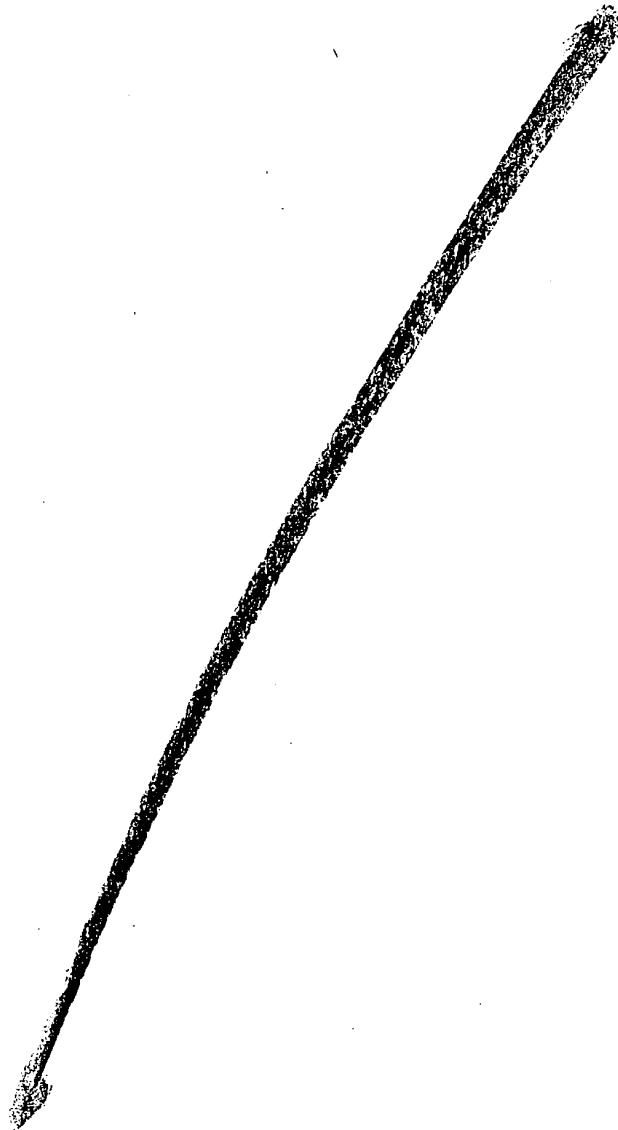
Easement Source: Deed from The Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Triborough Bridge and Tunnel Authority ("TBTA") dated December 15, 1980, and recorded December 17, 1980 in Reel 547 Page 1306, as corrected by Correction Deed from Grantor to TBTA dated August 12, 1981 and recorded September 14, 1981 in Reel 582, Page 1102, each as modified by Release of Easements from Consolidated Rail Corporation dated March 26, 1982 and recorded April 21, 1982, in Reel 619, Page 626

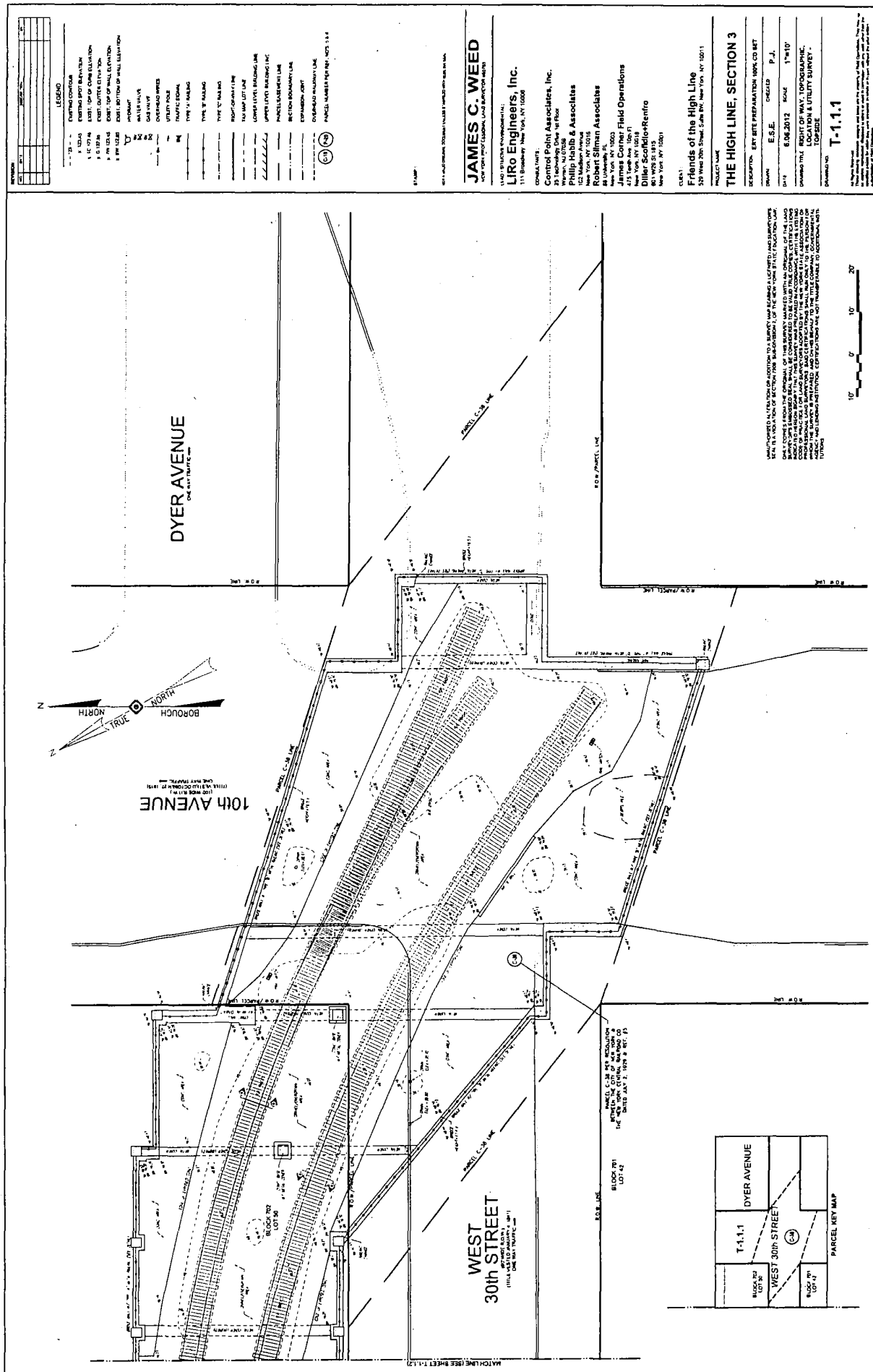
320 12th Avenue Block 676 Lot 3

Easement Source: Deed from the Owasco River Railway, Inc. and Consolidated Rail Corporation (collectively, "Grantor") to Triborough Bridge and Tunnel Authority dated December 15, 1980 and recorded December 17, 1980 in Reel 547 Page 1306, as corrected by Correction Deed from Grantor to TBTA dated August 12, 1981 and recorded September 14, 1981 in Reel 582 Page 1102, each as modified by Release of Easements from Consolidated Rail Corporation dated March 26, 1982 and recorded April 21, 1982 in Reel 619, Page 626

Exhibit C

LEGAL DESCRIPTION OF THE HIGH LINE EASEMENT AREA







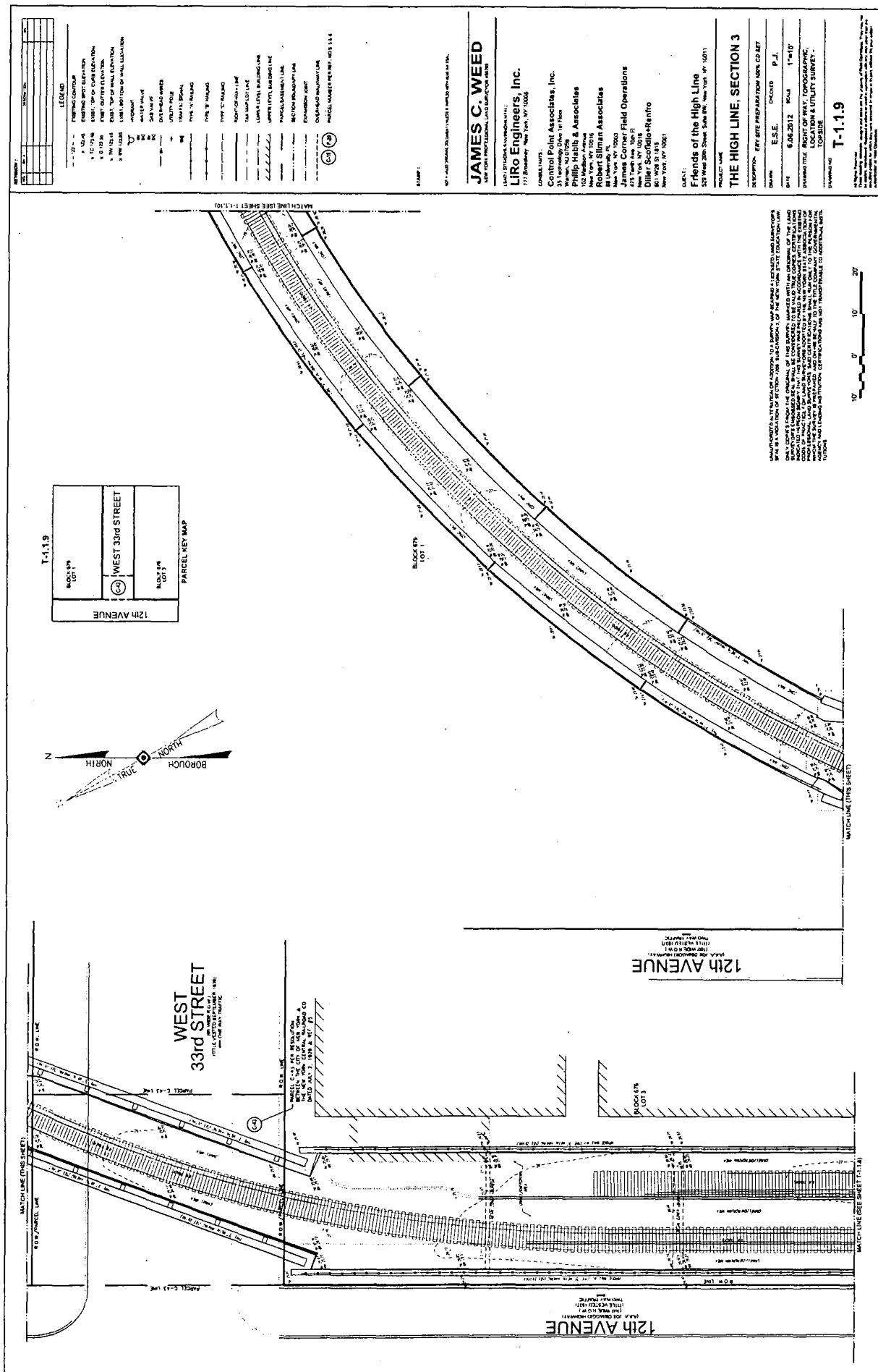


Exhibit D

WSY Highline Agreement – Insurance Requirements (MTA RIM Revised 11/16/10)

1. **The City of New York or its Property Manager shall procure at its sole cost and expense and shall maintain in force at all times during the term of this Agreement, policies of insurance in accordance with the terms set forth below:**

Commercial General Liability Insurance (I.S.O. 2001 Form or equivalent approved by LIRR and MTA with limits of liability in the amount of at least \$10,000,000 each occurrence/\$10,000,000 General Aggregate Limit (other than products-completed operations)/\$10,000,000 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to “drop down” to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any LIRR or MTA policy available.

Such policy should be written on an occurrence form, and shall include:

- Contractual coverage for liability assumed under this agreement;
- Personal and Advertising Injury Coverage;
- Products-Completed Operations
- Independent Contractors Coverage;
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be removed in this respect; and
- Additional Insured Endorsement (I.S.O. Form CG 20 10 1185 version or equivalent approved by the LIRR and MTA naming:
 - Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates, National

Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc.

Self Insurance: Notwithstanding the foregoing, for as long as the City of New York is the Easement Holder, Easement Holder may act as a self-insurer. The City of New York's option to self-insure does not extend to any contractor the City of New York may hire for the work to be performed under this Agreement. The City of New York's contractors must adhere to all the insurance provisions set forth herein. The City of New York further agrees that its decision to self-insure shall in no way limit the defenses or indemnification available to LIRR and MTA.

2. **During any Easement Holder Work, the following insurance must be submitted and approved by LIRR and MTA prior to the start of any work, and shall be maintained for the duration of any and all project(s):**

Except that as otherwise provided in this Easement, the general contractor, construction manager or contractor, as the case may be (in either case, the "Easement Holder's Contractor"), shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Agreement, through the final completion of the applicable contract, policies of insurance as herein below set forth, written by companies with an A.M. Best Company rating of A-/VII or better, and approved by the LIRR and MTA and shall deliver evidence of such policies. These policies must: (i) be written in accordance with the requirements of the paragraphs below, as applicable; (ii) be endorsed in form acceptable to include a provision that the policy will not be canceled, materially changed, or not renewed, unless at least thirty (30) days prior written notice to the LIRR and MTA c/o MTA Risk and Insurance Management Department - Standards, Enforcement & Claims Unit, 2 Broadway – 21st floor, New York, NY 10004, (iii) state or be endorsed to provide that the coverage afforded under the Easement Holder's Contractor's policies shall apply on a primary and not on an excess or contributing basis with any policies which may be available to the LIRR and MTA, and also that the Easement Holder's Contractor's policies, primary and excess, must be exhausted before implicating any LIRR or MTA policy available, and (iv) state or be endorsed to provide that, if a subcontractor's policy contains any provision that may adversely affect whether Easement Holder's Contractor's policies are primary and must be exhausted before implicating any LIRR or MTA policy available, Easement Holder's Contractor's and subcontractor's policies shall nevertheless be primary and must be exhausted before implicating any LIRR or MTA policy available. Except for Professional Liability, policies written on claims made basis are not acceptable. At least two (2) weeks prior to the expiration of the policies, Easement Holder's Contractor shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies. Except as otherwise indicated in the detailed coverage paragraphs below, self insured retentions and policy deductibles shall not exceed \$500,000, unless such increased deductible or retention is approved by LIRR and MTA. The Easement Holder's Contractor shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss. The insurance monetary limits

required herein may be met through the combined use of the insured's primary and umbrella/excess policies.

A. **Workers' Compensation Insurance** (including Employer's Liability Insurance with limits of not less than \$2,000,000 for Easement Holder Work involving structural construction or reconstruction, and \$500,000 for other construction (i.e., trade work) repairs, maintenance and inspection, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of New York State.

B. **Commercial General Liability Insurance** (I.S.O. 2001 Form or equivalent approved by LIRR) in the Easement Holder's Contractor's name with limits of liability in the amount of at least, in the case of Easement Holder Work involving structural construction or reconstruction, \$10,000,000 each occurrence/\$10,000,000 General Aggregate Limit (other than products-completed operations)/\$10,000,000 Products/Completed Operations Aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property. For other construction work (i.e., trade work), the above limits shall be \$3,000,000, and for repairs, maintenance and inspections, the above limits shall be \$1,000,000. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any LIRR or MTA policy available.

Such policy should be written on an occurrence form, and shall include:

- Contractual coverage for liability assumed under this agreement;
- Personal and Advertising Injury Coverage;
- Products-Completed Operations;
- Independent Contractors Coverage;
- "XCU" coverage (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be removed in this respect; and;
- Additional Insured Endorsement I.S.O. Form CG 20 10 1185 or CG 20 26 and CG 20 37 7/04 version or its equivalent may be utilized naming:

- Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc.

C. Business Automobile Liability Insurance (I.S.O. Form CA 00 01 10 01) or equivalent approved by the Authority) in the Easement Holder's Contractor's name with limits of liability of at least \$2,000,000 for construction work (\$1,000,000 for maintenance, repair and inspection work) each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle. The policy shall be extended to include employees of any insured acting in the scope of their employment.

- If the project involves transporting and/or disposing of any hazardous material or waste off of the jobsite, the Easement Holder's Contractor or any subcontractor performing such work must add the MCS-90 to the automobile policy.
- The CA9948 03/06 endorsement or equivalent is also required if transporting hazardous material to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. **(Additional pollution liability insurances maybe required, which are identified in below paragraphs.)**
- The policy limits of liability must be increased to at least \$5,000,000 each occurrence pursuant to federal, state or local laws, rules and regulations, and
- Copies of all required endorsements shall be provided, for review as part of the insurance submission.

D. **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form approved by the MTA), covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured's own property and conforming to the following:

- The following are the "Named Insureds" for this coverage:
- Long Island Rail Road (LIRR), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc.

- The limit of liability shall be at least \$5,000,000 each occurrence for Easement Holder Work involving structural construction or reconstruction, \$3,000,000 for other construction (i.e., trade work) and \$1,000,000 for repair, maintenance and inspection, subject to a \$10,000,000 annual aggregate for Easement Holder Work involving structural construction or reconstruction, \$5,000,000 for other construction (i.e., trade work), and \$2,000,000 for repair, maintenance and inspection;
- Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer's Liability Act (FELA).
- Indicate the name and address of the contractor to perform the work, the description of work, and location.
- Evidence of Railroad Protective Liability Insurance, must be provided in the form of the Original Policy. A detailed **Insurance Binder (ACORD or Manuscript Form)** will be accepted pending issuance of the Original Policy, which must be provided within 30 days of the Binder Approval.

E. **Professional Liability Insurance** including, in the case of a contract involving environmentally regulated substances or hazardous material exposure(s), Pollution Liability covering actual or alleged negligent acts, errors or omissions committed by the consultant in the performance of activities under this Agreement, regardless of the type of damages. The policy coverage shall also extend to include personal injury, bodily injury and property damage from the performance of professional service and/or arising out of the work. The policy shall have a limit of liability of not less than five million dollars \$5,000,000 per claim. The policy may contain a deductible clause of a maximum of five hundred thousand dollars \$500,000 unless such increased deductible is approved by LIRR and MTA. But in such case the deductible is the sole responsibility of Consultant and no portion of such deductible is the responsibility of the LIRR and MTA. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.

If this insurance is provided on a claims-made basis, the Consultant shall maintain continuous insurance coverage during the term of this Agreement and in addition to the coverage requirements above, such policy shall provide that:

- i. Policy retroactive date coincides with or precedes the insureds' initial services under the Agreement and shall continue until the

termination of the Agreement (including subsequent policies purchased as renewals or replacements);

- ii. Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- iii. An extended Reporting Period of at least one year will be available and must be purchased in the event ongoing coverage is not maintained.
- iv. Consultant shall provide pollution liability coverage as part of its Professional Liability Insurance Policy.

F. **Easement Holder's Contractor's Pollution Liability** - In the case of a contract involving environmentally regulated substances or hazardous material exposure(s), the Easement Holder's Contractor shall provide Contractor's Pollution Liability Insurance with respect to the work and activities of the Easement Holder's Contractor or its Subcontractors, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall have limits of liability specifically written for this contract in the amount of at least \$3,000,000. The Easement Holder's Contractor shall comply with all federal, state, and/or local laws, rules and regulations and shall obtain any additional coverages required by federal, state, or local government agencies. The Easement Holder's Contractor's Pollution Liability Insurance shall be in effect from the time the MTA/LIRR permits the work relating to the Hazardous Substances or other environmentally regulated substances and materials to begin through the completion of the work.

- i. This insurance shall name the following entities as additional insured's: LIRR and MTA including its subsidiaries and affiliates.
- ii. This insurance may be supplied by the subcontractor performing the Parcel Owner Work, if the Easement Holder's Contractor is not performing any of the relevant Parcel Owner Work and providing all applicable additional insureds are named.
- iii. The Easement Holder's Contractor or its sub-contractor performing the Parcel Owner Work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Project Engineer. The insurance shall be submitted to MTA Risk and Insurance Management Department pursuant to requirements referenced in the Insurance Article.
- iv. In the event that the Easement Holder's Contractor or its subcontractors transports from the Site hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the **MCS-90 Endorsements**

shall be attached to the auto liability policy. The CA9948 03/06 endorsement or equivalent is also required if transporting to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. Both shall be furnished on a primary basis with limits of liability of at least \$3,000,000 per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. **A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the \$3,000,000 limits.**

- v. Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the work should be provided to the MTA/LIRR.

G. Pollution Legal Liability (Non-Owned Disposal Site Coverage) - If the project activities include the disposal of waste or other hazardous substance from the work site, the Easement Holder's Contractor shall maintain or cause to be maintained pollution legal liability with limits of liability of at least \$3,000,000 per occurrence naming the following as additional insureds, with a copy of said endorsement submitted to the LIRR and Metropolitan Transportation Authority.

Additionally, coverage shall be maintained in one of the following ways:

- i. A stand-alone policy;
- ii. If coverage is not provided under a stand alone policy, but is included in either an Environmental Package policy and/or a Contractors Pollution Liability policy, a Non-Owned Disposal Site endorsement may be provided listing the indemnitees referenced above as additional insureds, or;
- iii. The contractor may also designate the disposal site, and provide a certificate of insurance from the disposal facility naming the above referenced indemnitees as additional insureds.

▪ G. (Intentionally left blank)

H. The City of New York and or the Easement Holder's Contractor (s) shall furnish evidence of all policies before any work is started to LIRR and MTA:

C/o MTA Risk & Insurance Management
Standards Enforcement & Claims Unit
2 Broadway – 21st Floor
New York, NY 10004

Except for Railroad Protective Liability or Builder's Risk insurance, certificates of Insurance may be supplied as evidence of such aforementioned policies, unless otherwise noted herein. However, if requested by the Agency, the Easement Holder's Contractor shall deliver to the Agency within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (1) be provided on the LIRR Certificate of Insurance Form (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (3) disclose any deductible, sub-limit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds Additional Named Insureds and/or Named Insureds as required herein. The Easement Holder's Contractor must provide a physical copy of the Additional Insured Endorsement (I.S.O. Form CG 20 10 1185 or CG 20 26 and CG 20 37 07/04 version or its equivalent, as applicable) and the endorsement(s) must include policy number(s); (5) reference the location and description of work on the face of the certificate; and (6) expressly reference the inclusion of all required endorsements.

Nothing herein contained shall be deemed to limit the Easement Holder's Contractor's liability to the limits of liability, or coverage of Policies listed above, their renewals, or replacement.

If, at any time during the period of this Contract, insurance as required is not in effect, or proof thereof is not provided to the LIRR and MTA, the LIRR and MTA shall have the option to direct the Easement Holder to suspend work.

3. **Notice of Claims.** Easement Holder shall not knowingly violate or knowingly permit to be violated any of the conditions or provisions of any policy of insurance required to be maintained hereunder, and shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies. Easement Holder shall provide written notice to the Parcel Owners promptly after Easement Holder becomes aware of any claim or proceeding that has been filed against it if such claim or proceeding involves any actual or alleged serious personal injury or death or any other claim that presents an unusual exposure to coverage, including without limitation (i) cord injury (including without limitation paraplegia or quadriplegia), (ii) amputations requiring a prosthesis, (iii) brain damage affecting mentality or the central nervous system (including without limitation permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak, hemiplegia or unconsciousness), (iv) blindness, (v) third-degree burns involving over ten percent (10%) of the body or second-degree burns involving over thirty percent (30%) of the body, (vi) multiple fractures (involving more than one member or non-union), (vii) fracture of both heel bones, (viii) nerve damage causing paralysis and loss of sensation in an arm and hand, (ix) massive internal injuries affecting body organs, (x) injury to a nerve at the base

of the spinal canal or any other back injury resulting in incontinence of bowel and/or bladder, or (xi) fatalities.

4. The Easement Holder waives all rights against Parcel Owners, including their directors, officers, officials and employees, for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to Easement Holder Work.

EXHIBIT E

INSURANCE FOR PARCEL OWNER WORK

Section 1.01 Parcel Owner's Obligation to Insure

A. From the commencement of any Parcel Owner Work until its completion, the Parcel Owner shall ensure that the types of insurance indicated in this Exhibit are obtained and remain in force, and that such insurance adheres to all requirements herein.

B. The Parcel Owner is authorized to undertake Parcel Owner Work under this Agreement only during the effective period of all required coverage.

Section 1.02 Parcel Owner's Right to Self-Insure

A. Notwithstanding anything contained in this Agreement, for as long as MTA is a Parcel Owner, MTA may act as a self-insurer with respect to Parcel Owner Work conducted on Parcels owned by MTA. The MTA's option to self-insure does not extend to any contractor the MTA may hire for the work to be performed under this Agreement. The MTA's contractors must adhere to all the insurance provisions set forth herein. The MTA further agrees that its decision to self-insure shall in no way limit the defenses or indemnification available to LIRR and MTA.

Section 1.03 Commercial General Liability Insurance

During any Parcel Holder Work, the following insurance must be submitted and approved by the Easement Holder prior to the start of any such Parcel Holder Work, and shall be maintained for the duration of any and all project(s), and except that as otherwise provided in this Easement, the general contractor, construction manager or contractor, as the case may be (in any case, the "Parcel Owner's Contractor"), shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Agreement, through the final completion of the applicable contract, policies of insurance as herein below set forth.

A. The Parcel Owner or the Parcel Owner's Contractor shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for Parcel Owner Work that is limited to inspections, maintenance, repairs and minor installations (such as conduit), and Five Million Dollars (\$5,000,000) for other work, such as construction, renovations or alterations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Viaduct and the Parcels and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000) in the case of inspections, repairs and minor installations, and Ten Million Dollars (\$10,000,000) for other work, such as construction, renovations or alterations. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Easement. Coverage shall be at least as broad as that provided by

the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner of Insurance, and shall be "occurrence" based rather than "claims-made." Policies providing such insurance may not include any endorsements excluding coverage relating to the emission of asbestos, lead, mold, or pollutants.

B. Such Commercial General Liability insurance shall name the Easement Holder (The City of New York), and any entity which the City may designate that is providing maintenance or other management services for the Viaduct, together with their directors, officers, officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 2026.

Section 1.04 Workers' Compensation, Employers Liability, and Disability Benefits Insurance

The Parcel Owner or the Parcel Owner's Contractor shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Parcel Owner Work, and such insurance shall comply with the laws of the State of New York.

Section 1.05 Business Automobile Liability Insurance

A. With regard to all operations under this License, the Parcel Owner or the Parcel Owner's Contractor shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 1.06 Property Insurance

A. For any Parcel Owner Work involving construction, alterations, renovation or other work other than merely inspections, maintenance, repairs and minor installations, the Parcel Owner or the Parcel Owner's Contractor shall maintain comprehensive "All Risk" or "Special Perils" form property insurance covering the segment of the Viaduct, as reasonably determined by Easement Holder (the "Insured Segment"), upon or through which the Parcel Owner Work is taking place. Such insurance shall provide full Replacement Cost coverage for the Insured Segment (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water, flood, subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Parcel Owner as Named Insured and the City as Loss Payee as their interests may appear.

B. The limit of such property insurance shall be no less than the full Replacement Cost of all Insured Segments, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an "all risk" or "special perils form" insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Insured Segment.

C. In the event of any loss to any of the Insured Segment, the Parcel Owner or the Parcel Owner's Contractor shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide Easement Holder with a copy of such notice. The Parcel Owner or the Parcel Owner's Contractor shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide Easement Holder with the maximum possible payment for the loss, and (ii) either provide Easement Holder with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Easement Holder's discretion, allow the City itself to adjust such claim.

Section 1.07 Pollution Insurance

A. Pollution Legal Liability Insurance.

1. The Parcel Owner or the Parcel Owner's Contractor shall maintain Pollution Legal Liability Insurance covering bodily injury, property damage, clean-up costs/remediation expenses and legal defense costs for new pollution conditions both on and off-site. If the Parcel Owner's operations include loading, unloading or transportation of any waste or hazardous materials to or from the Viaduct or a Parcel, this insurance shall expressly include such activities and any non-owned facilities/sites utilized for the disposal of wastes or hazardous materials transported from the Viaduct or a Parcel. If a Parcel upon which any excavation, borings or other ground disturbance is to take place contains any underground storage tank(s), this insurance shall expressly include such tanks.

2. This insurance shall have a limit of at least Three Million Dollars (\$3,000,000), and provide coverage for Easement Holder (The City of New York), and any entity which the City may designate that is providing maintenance or other management services for the Viaduct, together with their directors, officers, officials and employees, as Additional Insureds. Coverage for the City shall be at least as broad as the Parcel Owner's. This insurance shall have a retroactive date on or before the commencement of the Parcel Owner Work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the completion of the Parcel Owner Work.

B. Contractors Pollution Liability Insurance.

1. In the event the Parcel Owner or the Parcel Owner's Contractor enters into a contract with another that involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other hazardous materials or substances, the Parcel Owner shall maintain, or cause the Parcel Owner Contractor to maintain, Contractors Pollution

Liability Insurance covering bodily injury, property damage, clean up costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor's operations at the Premises.

2. If required, the Contractors Pollution Liability Insurance shall each have a limit of at least Two Million Dollars (\$2,000,000) and provide coverage for the Parcel Owner as Named Insured or Additional Insured and the City, together with their directors, officers, officials and employees, as Additional Insured. Coverage for the City shall be at least as broad as the Parcel Owner's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

Section 1.08 General Requirements for Insurance Coverage and Policies

A. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from Easement Holder.

B. Policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by Easement Holder.

C. Except as provided in Section 1.02 A above, there shall be no self-insurance program with regard to any insurance required under this Exhibit unless approved in writing by Easement Holder. The Parcel Owner shall ensure that any such self-insurance program provides Easement Holder with all rights that would be provided by traditional insurance under this Exhibit, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

D. All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the Easement Holder with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason; and to mail such notice to both the Easement Holder and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007, or to such other address in lieu thereof of which Easement Holder may notify Parcel Owner. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

Section 1.09 Proof of Insurance

A. Certificates of Insurance for all insurance required in this Exhibit E must be submitted to and accepted by the Easement Holder prior to the commencement of Parcel Owner Work.

B. For Workers' Compensation, Employers Liability Insurance and Disability Benefits insurance, the Parcel Owner or the Parcel Owner's Contractor shall submit one of the following:

1. C-105.2 Certificate of Worker's Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

C. For all insurance required under this Exhibit other than Workers Compensation, Employers Liability, and Disability Benefits insurance, the Parcel Owner or the Parcel Owner's Contractor shall submit one or more Certificates of Insurance in a form acceptable to the Easement Holder. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Parcel Owner's or Parcel Owner's Contractor's policy/ies (including its general liability policy) by which the Easement Holder and any entity which the City may designate that is providing maintenance or other management services for the Viaduct has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by Easement Holder or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

D. Certificates of Insurance confirming renewals of insurance shall be submitted to the Easement Holder prior to the expiration date of coverage of all policies required under the Easement. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

E. Acceptance or approval by the Easement Holder of a Certificate of Insurance or any other matter does not waive Parcel Owner's obligation to ensure that

insurance fully consistent with the requirements of this Exhibit is secured and maintained, nor does it waive Parcel Owner's liability for its failure to do so.

F. The Parcel Owner or the Parcel Owner's Contractor shall be obligated to provide Easement Holder with a copy of any policy of insurance required under this Exhibit upon request by the Easement Holder.

Section 1.10 Miscellaneous

A. The Parcel Owner or the Parcel Owner's Contractor may satisfy its insurance obligations under this Exhibit through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

B. The Parcel Owner or the Parcel Owner's Contractor shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not Easement Holder is an insured under the policy.

C. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Exhibit, the Parcel Owner or Parcel Owner's Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any Parcel Owner Work (including notice to Commercial General Liability insurance carriers for events relating to the Parcel Owner's or Parcel Owner's Contractor's own employees) no later than 20 days after such event. For any policy where Easement Holder is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Parcel Owner or Parcel Owner's Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007, or such other address in lieu thereof of which Easement Holder may notify Parcel Owner.

D. The failure of the Parcel Owner or the Parcel Owner's Contractor to secure and maintain insurance in complete conformity with this Exhibit, or to give the insurance carrier timely notice on behalf of Easement Holder, or to do anything else required by this Exhibit shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by Easement Holder at any time.

E. Insurance coverage in the minimum amounts provided for in this Exhibit shall not relieve the Parcel Owner of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

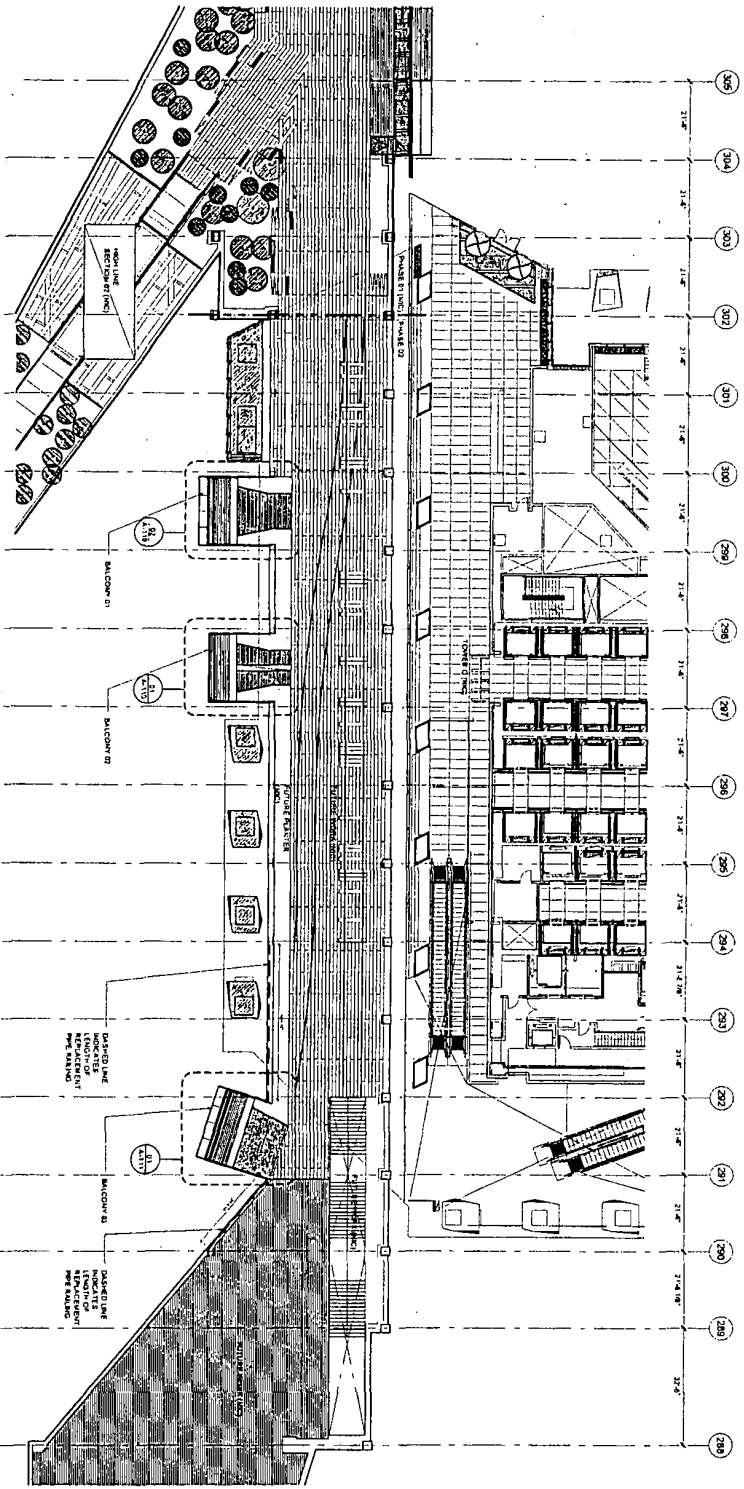
F. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Exhibit, the Parcel Owner shall at all times fully cooperate with Easement Holder with regard to such potential or actual claim.

G. The Parcel Owner waives all rights against Easement Holder, including their directors, officers, officials and employees, for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to Parcel Owner Work.

H. In the event the Parcel Owner requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement and requires such entity to name the Parcel Owner as an additional insured under such insurance, the Parcel Owner shall ensure that such entity also name Easement Holder and any entity which the City may designate that is providing maintenance or other management services for the Viaduct, including their directors, officers, officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

I. In the event the Parcel Owner receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Parcel Owner shall immediately forward a copy of such notice to both the Easement Holder and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007, or such other address in lieu thereof of which Easement Holder may notify Parcel Owner. Notwithstanding the foregoing, the Parcel Owner shall ensure that there is no interruption in any of the insurance coverage required under this Article.

01 LAYOUT PLAN
SCALE: 1/8" = 1'-0"



NOTE: EXISTING WORK
SHOWN FOR CLARITY
AND NOT TO SCALE
BALCONIES INC.

REVISION	DATE	BY	APP'D

LEGEND

INTERIM REVIEW ONLY
This drawing is for review only and is not to be used for construction. It is subject to change without notice.

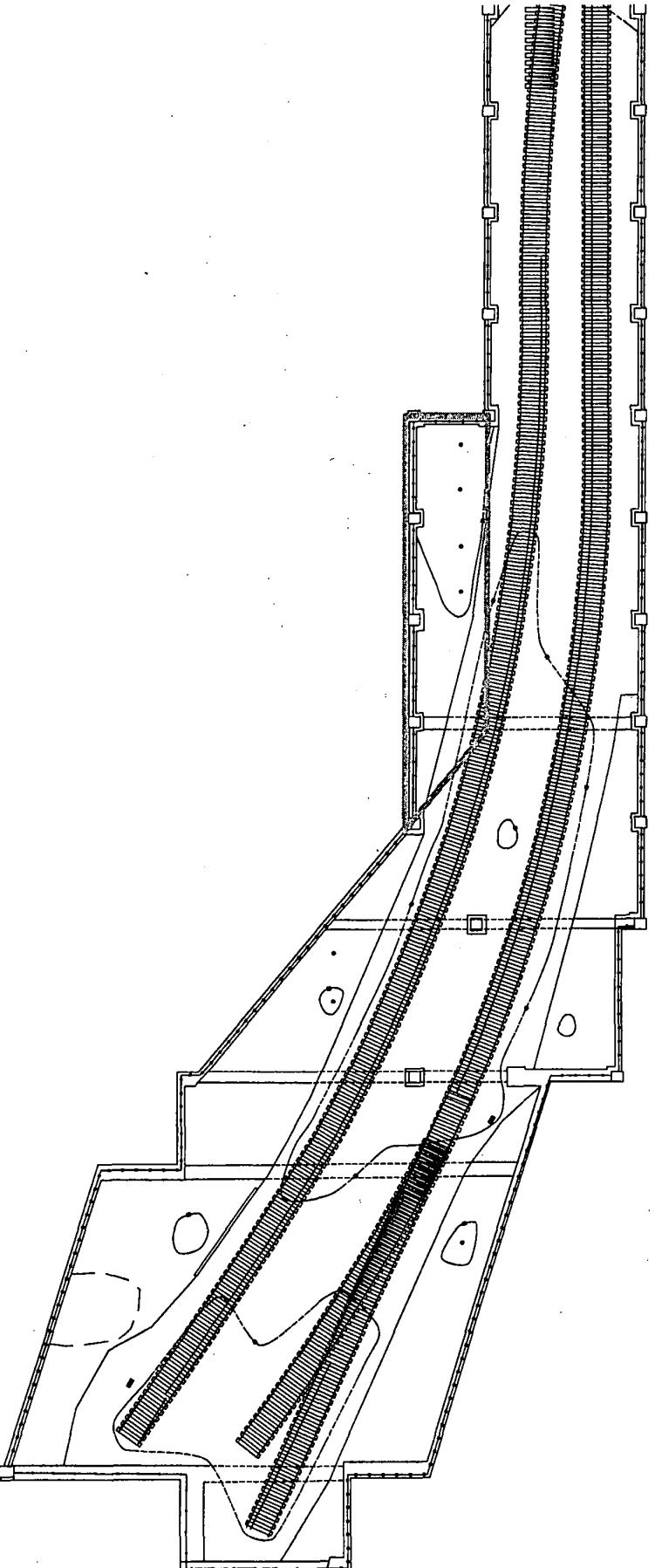
LEAD ARCHITECT
James Corner Field Operations
100 West 25th Street, New York, NY 10011
ARCHITECT
Sudhakar + Ramo Architects, P.C.
100 West 25th Street, New York, NY 10011
OWNER
BUNO JARROLD
100 West 25th Street, New York, NY 10011

CLIENT
NYC Economic Development Corp.
NYC Department of Parks & Recreation
The Michael Corcoran Plaza, New York, NY 10011
Friends of the High Line
529 West 25th Street, Suite 400, New York, NY 10011
PROJECT NAME
THE HIGH LINE, SECTION 3
PASSAGE BALCONIES

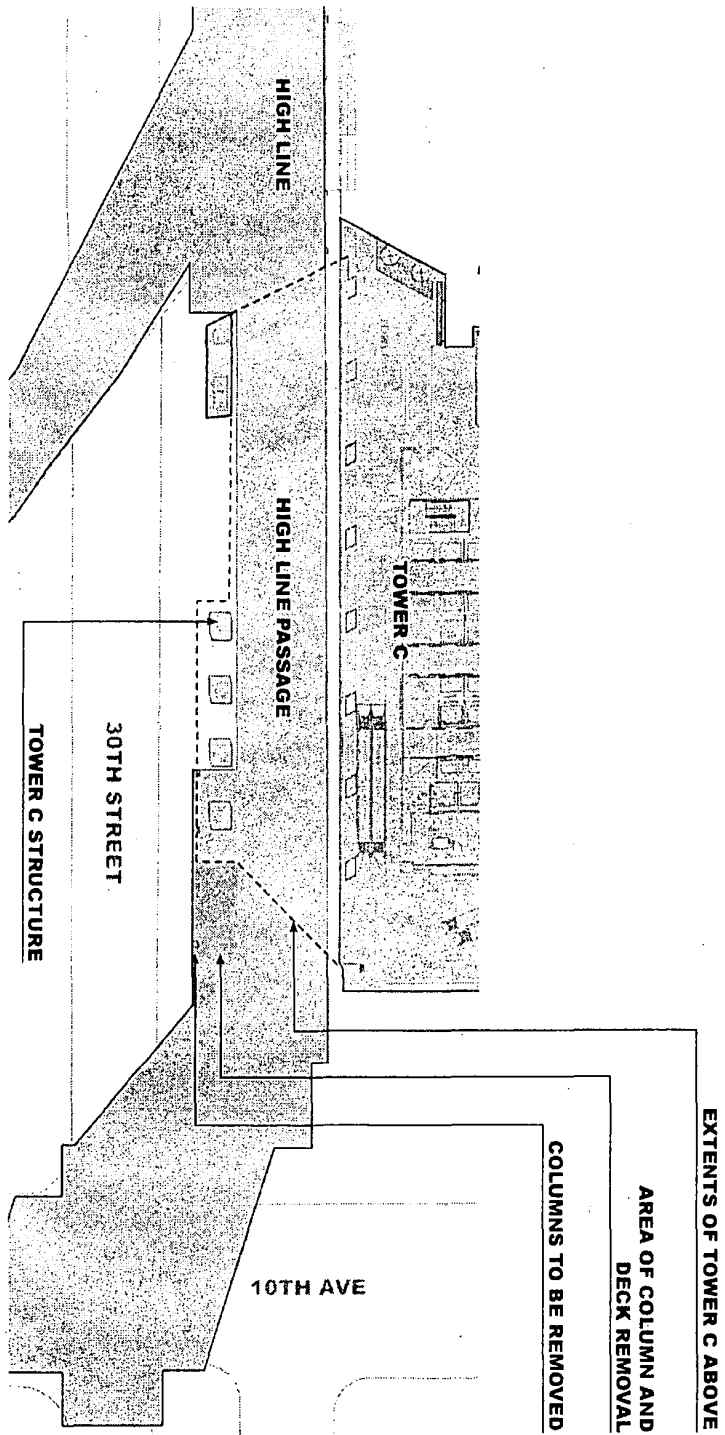
Drawn TITLE
LAYOUT PLAN

DATE	08.14.2012
DESIGNED BY	SD PRICING
DRAWN BY	BS
CHECKED BY	ML
DATE	08.14.2012
PROJECT NAME	A-100.00
16 OF 21	

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High Line - Section 3
Area of 4 Column Removals



**EXECUTED SOLELY TO
ACKNOWLEDGE AND AGREE TO
SECTIONS 13 AND 19 HEREOF:**

LEGACY YARDS TENANT LLC,
a Delaware limited liability company

By:

Name:

Title:

[Signature]
L. Jay Cross
Authorized Signatory

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On the 10 day of April in the year 2013 before me, the undersigned, personally appeared L. Jay Cross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public

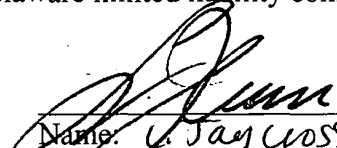
ALLISON EGGLESTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EG6103706
Qualified in Suffolk County
My Commission Expires January 05, 2016

SEAL

**EXECUTED SOLELY TO
ACKNOWLEDGE AND AGREE TO
SECTIONS 13 AND 19 HEREOF:**

WRY TENANT LLC,
a Delaware limited liability company

By:

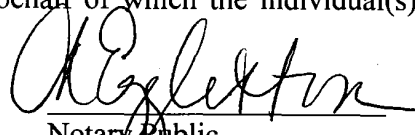

Name: L. Jay Cross
Title: President

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On the 10 day of April in the year 2013 before me, the undersigned, personally appeared L. Jay Cross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

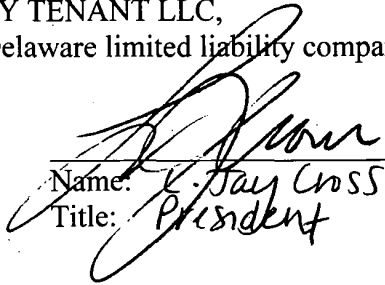
ALLISON EGGLESTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EG6103706
Qualified in Suffolk County
My Commission Expires January 05, 2014

SEAL

**EXECUTED SOLELY TO
ACKNOWLEDGE AND AGREE TO
SECTIONS 13 AND 19 HEREOF:**

ERY TENANT LLC,
a Delaware limited liability company

By:

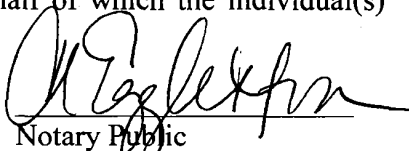

Name: L. Jay Cross
Title: President

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On the 10 day of April in the year 2013 before me, the undersigned, personally appeared L. Jay Cross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

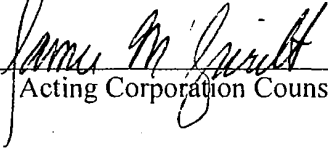

Notary Public

SEAL

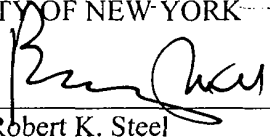
ALLISON EGGLESTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EG6103706
Qualified in Suffolk County
My Commission Expires January 05, 2016

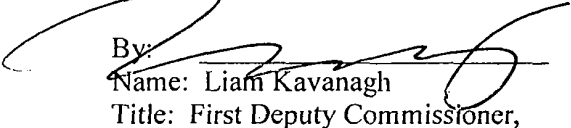
IN WITNESS WHEREOF, and intending to be legally bound hereby, this Agreement has been duly executed by the parties hereto as of the date first above written.

APPROVED AS TO FORM:

By: 
Acting Corporation Counsel

THE CITY OF NEW YORK

By: 
Name: Robert K. Steel
Title: Deputy Mayor

By: 
Name: Liam Kavanagh
Title: First Deputy Commissioner,
Department of Parks & Recreation

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

On the 3 day of April in the year 2013 before me, the undersigned, personally appeared Robert K. Steel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SEAL

Lynne E. Gardner

Notary Public

Lynne E. Gardner
Notary Public, State of New York
NO. 01GA4992059
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires 2-18-14

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

On the 4 day of ~~March~~ ^{April} in the year 2013 before me, the undersigned, personally appeared Liam Kavanagh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SEAL

Alessandro G. Olivieri

Notary Public

SEAL

ALESSANDRO G. OLIVIERI
Notary Public, State of New York
No. 02016001937
Qualified in New York County
Commission Expires 1/26/2014

METROPOLITAN TRANSPORTATION
AUTHORITY

By:


Name: **Jeffrey B. Rosen**
Title: **Director, Real Estate**

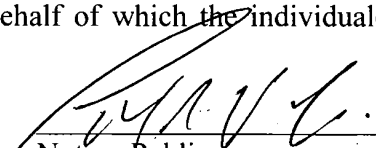
STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

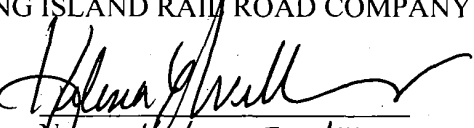
On the 2nd day of APRIL in the year 2013 before me, the undersigned, personally appeared Jeffrey B. Rosen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.




Notary Public
CAROL ROTHSTEIN-VIOLA
Notary Public, State of New York
No. 01RO6051364
Qualified in Kings County
Commission Expires Nov. 27, 2014

LONG ISLAND RAILROAD COMPANY

By:

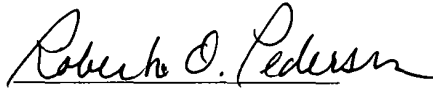

Name: Helena E. Williams
Title: President

STATE OF NEW YORK)

QUEENS ss:

COUNTY OF ~~NEW YORK~~)

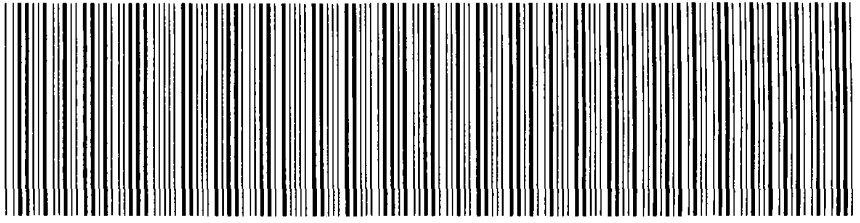
On the 14th day of March in the year 2013 before me, the undersigned, personally appeared Helena E. Williams, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

SEAL

ROBERTA O. PEDERSEN
Notary Public, State of New York
No. 02PE4871058
Qualified in Queens County
Commission Expires Aug. 18, 2014

NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER



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SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2013041500721008
Document Type: EASEMENT

Document Date: 04-10-2013

Preparation Date: 06-14-2013

SUPPORTING DOCUMENTS SUBMITTED:

Page Count

Attachment 3

Amtrak's Construction Specification for the Project

PART 1 - GENERAL**1.01 SECTION INCLUDES**

- A. Requirements for furnishing all labor, materials, tools, and equipment and performing all operations necessary to maintain, protect, secure and, if necessary, safely support (such as underpinning by ground treatment methods) existing facilities, and structures including bridges, tunnels, utilities and Railroad infrastructure in the vicinity of the Project affected by the Work hereunder.
- B. This Section covers existing facilities, structures, utilities and Railroad infrastructure including, but not limited to:
 - 1. High Line Structure
 - 2. 11th Avenue Viaduct Structure
 - 3. Hudson Yards Tunnel
 - 4. NYCT No. 7 Line Subway Tunnels
 - 5. Substations, Switch Gear and Appurtenances
 - 6. Underground Utilities:
 - a. Key Control Cables
 - b. Cables
 - c. Compressed Air
 - d. Gas
 - e. Water
 - f. Power
 - g. Communications
 - h. Cablevision
 - i. Drainage/Sewage
 - j. Cable/Utility Channels
 - k. Manholes
 - 7. Railroad Systems:

- a. Tracks and third rail facilities including switches and point operating equipment
 - b. Power Supply systems
 - c. Signal systems
 - d. Control systems
- 8. Existing Monitoring Wells
- C. This section also specifies the requirements for performing, and the elements included in, a Pre-Construction Survey and a Post-Construction Survey of existing facilities and structures within the zone of influence of the Work.
- D. Any facility that is complete or partially complete at time of Contractor's construction activities shall be protected in accordance with the requirements of this Section.
- E. Definitions:
 - 1. Action Level Plan: Detailed plan for corrective measures to be implemented should the Response Levels be reached or exceeded, as specified herein.
 - 2. Alert Level: The second and greater instrument reading that may stop the construction and necessitates mitigative action to halt settlement or other movement and avoid damage to existing structures and facilities.
 - 3. Facility: Building, bridge, roadway, railroad infrastructure, structure, tunnel, or element of a utility system. This does not include new tunnels, shafts, or related ancillary structures to be built under this Contract.
 - 4. Protection: Work required for maintaining required operation of, and/or structural integrity for, existing facilities which may be achieved by methods such as but not limited to effective control of support of excavation systems, dewatering, excavation and construction staging. Any remediation, improvement or repairs required to improve the existing condition prior to construction to ensure continued operation and structural integrity, are also included in this definition.
 - 5. Response Levels: These are "Alert Level" and "Review Level".
 - 6. Response Ranges: Comparable to Response Levels, but for railroad tracks. See additional information herein below.
 - 7. Review Level: The instrumentation value range above which will trigger the evaluation of current construction methodology and if necessary, implementation of mitigative action to avoid detrimental effect on the surrounding facilities.

8. Zone of Influence: A theoretical zone of potential ground movements due to excavation activities and blasting. The zone of influence is dependent on the Contractor's means and methods and may include ground movements due to support of excavation (SOE) wall installation, excavation, blasting, vibrations, or groundwater control activities.

1.02 REFERENCED SECTIONS

- A. Section 01540 – Safety Planning and Supervision
- B. Section 01555 – Maintenance and Protection of Traffic
- C. Section 02240 - Dewatering
- D. Section 02485 – Secant Pile Walls
- E. Section 02495 – Instrumentation
- F. Section 03300 – Cast-in-Place Concrete
- G. Section 05120 – Structural Steel

1.03 CITED STANDARDS

- A. New York City Department of Transportation Standard Highway (NYCDOT) Specifications

1.04 NOTED RESTRICTIONS

- A. Protection of all Railroad facilities shall be coordinated with the appropriate Railroad.
- B. Do not begin Maintenance and Protection Work until the following conditions have been met:
 1. Required submittals have been made and the Owner's Representative has reviewed submittals.
 2. Contractor performs a pre-construction survey of existing structures, facilities, utilities and Railroad infrastructure, including but not limited to Railroad facilities, switches, third-rail and catenary structures, and other structures adjacent to the excavation areas prior to the start of work, and shall submit a pre-construction survey report to the Owner's Representative for review not less than 14 days before beginning support of excavation wall installation.
 3. Installation of geotechnical instrumentation and monitoring program (subsurface, surface and building) has been completed and base lined, in accordance with Section 02495.

4. All issues related to health and safety have been met and all submittals have been made in accordance with Occupational Safety & Health Administration (OSHA) requirements, Section 01540, and other applicable codes and regulations of Federal, State, City, and local agencies having jurisdiction.
 5. Required personnel with qualifications specified in the referenced Sections and herein are available on the Work Site to perform the Work.
 6. Maintenance and protection Work shall adhere to schedule restrictions due to train and traffic movements, Work Site access constraints, and safety policies in force at the time.
 7. The maintenance and protection methods shall not contaminate or degrade the groundwater quality on the Work Site. The method has to be compatible with Amtrak, MTA/LIRR and NYCDOT access and protection restrictions and closure requirements.
 8. All permits and permissions for maintenance and protection Works have been obtained from property owners including Amtrak, MTA/LIRR and NYCDOT, and submitted to the Owner's Representative. Permits not included in the bid documents are the Contractor's responsibility.
- C. Assume financial responsibility for repairs to be made by the Railroads and utility companies for damage to their facilities and structures caused by the Contractor's operations. Do not make repairs to utility facilities without written direction from the Owner's Representative and facility owner.
- D. No structure or part of a structure shall be modified, removed or demolished without prior review of Work plan by the Owner's Representative. No modification of bridge piers below existing ground surface shall take place without prior inspection of partially exposed footing by Owner's Representative.

1.05 QUALITY CONTROL

- A. Regulatory Requirements:
1. Amtrak's Track Safety Standards:
 - a. AMTRAK MW 1000 – Limits and Specifications for the Safety, Maintenance, and Construction of Track
 2. Code of Federal Regulations (CFR)
 - a. 29 CFR 1926 – Safety and Health Regulations for Construction (OSHA)

- B. Employ a superintendent for this Work with a minimum of six (6) months experience in responsible charge of similar operations during the three (3) years preceding start of construction.
- C. The Work shall comply with applicable Federal, State, City, and local regulatory requirements.
- D. Contractor's designer shall be a Professional Engineer licensed in the State of New York. Establish to the satisfaction of the Owner's Representative that Contractor's designer has suitable experience in the type of Work specified herein.
- E. Pre- and post-construction surveys shall be conducted and reported by Contractor's designer. Establish to satisfaction of Owner's Representative that Contractor's designer has at least ten years' relevant experience, and has performed condition assessment on buildings, buried structures and utilities for at least one project of comparable scope within the last five years.
- F. Contractor shall be responsible for safety and any damage due to its Work and for any corrective action or repairs needed to restore any damaged structure or facility to its condition that existed before the start of Work.
- G. Assess ground movement and damage to facilities, structures, utilities, and Railroad infrastructure, caused by the Work. Verify the adequacy of the response/ threshold levels and if necessary propose more stringent response/ threshold levels, to match Contractor's chosen means and methods of construction. Ensure the adequacy, stability and safety of the identified facilities, structures, utilities and Railroad infrastructure affected by Contractor's chosen means and methods of construction.

1.06 COORDINATION FOR PRE-CONSTRUCTION AND POST-CONSTRUCTION SURVEYS

- A. Make arrangements for access to buildings and facilities through the Owner's Representative or directly with owner of building or facility, as applicable. Provide documentation of direct coordination.
- B. The Owner's Representative may participate in the structures surveys. Notify the Owner's Representative not less than 48 hours prior to performing the inspections, and perform these inspections at times convenient to the Owner's Representative.
- C. Coordinate the requirements of Section 02495 Instrumentation, which requires monitoring to detect possible movement of structures and other facilities. Document placement of monitoring devices and existing conditions at the time of placement of devices in a Pre-Construction Condition Survey Report as specified herein.

1.07 SUBMITTALS

- A. Qualification: A minimum of 60 days before commencement of the Work, submit documentation for review to the Owner's Representative demonstrating that the assigned superintendent proposed to perform the Work covered by this Section meets requirements specified herein.
- B. A minimum of 45 days before commencement of the Work, submit the following:
 - 1. Assessment of potential ground movements and potential damage caused by the Work on facilities, structures, utilities, and Railroad infrastructure. Assessments shall include computations and Shop Drawings.
 - 2. Work plan for protecting existing facilities, structures, utilities and Railroad infrastructure, which shall include the following as a minimum:
 - a. Methods, staging, and necessary details for maintenance and protection measures.
 - b. Design computations to support Shop Drawings.
 - c. Maintenance and protection of Work schedule shall be coordinated with Railroad operations as required. Schedule shall show times for mobilization and installation of protective measures as related to the tunnel driving and shaft/ open-cut excavation activities.
 - d. Copies of required permits to be obtained by Contractor.
 - e. Action Level Plans: Detailed plans for corrective measures to be implemented should the Response Levels or ranges be reached. The Action Level Plans shall include an Emergency Response Plan, which shall describe in detail the contingency plans for disabling tracks/ diverting traffic and notifying emergency services should alert levels or "red" range values be exceeded (or any other emergency situation caused by construction activities that influences structures, utilities or Railroad infrastructure).
 - f. Together with Action Level Plans, submit proposed Review and Alert Level movement limits for instruments to be installed outside of the facilities where such movement limits have been specified herein.
- C. Pre-Construction Condition Survey Report: Submit Pre-Construction Condition Survey Reports no later than 90 days before commencement of Work.
- D. Post-Construction Condition Survey Report: Submit Post-Construction Condition Survey Reports within 30 days of completing the post-construction condition surveys.
- E. Owner's Representative to review and approve all submittals.

1.08 DELIVERABLES

None Listed

PART 2 - PRODUCTS**2.01 MATERIALS**

- A. Provide materials conforming to the applicable requirements for each system for which they are required or, if not specified, conform to the requirements of the respective utility or structure owner.
- B. All lumber and plywood used for the protection of existing facilities shall be fire retardant.
- C. Cast-in-Place Concrete shall conform to the Section 03300.

PART 3 - EXECUTION**3.01 GENERAL**

- A. Verify in the field all dimensions, locations, and elevations of existing structures shown on the Contract Drawings, on As-Built drawings and/ or data supplied by the Owner's Representative for existing facilities, structures or installations before commencement of any Work that may require modification of these facilities. Notify the Owner's Representative of any discrepancies between Contract Drawings and documentation provided by the Owner's Representative, and actual conditions that may exist before performing related Work.
- B. It is the responsibility of the Contractor and its Designer to determine measures and develop engineering designs, and implement those measures necessary to protect the stability and integrity of every facility, structure, utility, and Railroad infrastructure that might be affected by the Work.
- C. As a minimum, maintenance and protection measures are to be designed and installed to limit movement to facilities, structures, utilities, and Railroad infrastructure, identified herein, to not exceed response (review/alert) levels that conform to Sections 02240 and 02495 specified herein.
- D. Repair or replace, with the same materials in place, any structure or portion thereof that is damaged by the Work subject to the approval of the property owner.
- E. Notify the Owner's Representative and the owners of utilities that are not indicated on the Contract Drawings or marked in the field.

- F. Notify the Owner's Representative to permit facility and utility owners, and personnel engaged by them, access to the Work Site in order to maintain, relocate or inspect their facilities, and cooperate with them in performing this Work. Access to NYCT tunnels shall be per additional requirements shown on the Contract Drawings.
- G. Provide and maintain safeguards necessary to protect persons and property from injury or damage during the performance of the Work. This includes protective fencing that may be required by the operating Railroads.
- H. Before the start of construction, verify the location of project control markers/ benchmarks and obtain sufficient information to confirm coordinate and elevation values of each Project control marker. Protect and maintain project control markers during construction.
- I. Conduct the Work so that no equipment, material, or debris will be placed on or be allowed to fall upon Railroad, bridges or private property in the vicinity of the Work unless acceptance from the Owner's Representative and the owner of the adjacent property is obtained.
- J. Comply with Owner's requirements for minimum clearance of all proposed Work with active railroad tracks, during the construction period.
- K. During construction, all affected pedestrian and vehicular traffic crossings shall be maintained and protected as indicated in Section 01555 and as shown on the Contract Drawings.
- L. Maintain, clean, and sweep all pedestrian walkways and vehicular roadways adjacent to the Work Site as required.
- M. Minimum Grouting/Ground Treatment Monitoring Requirements:
 - 1. General: As specified in Section 02495 and the Contract Drawings.
 - 2. During Grouting/Ground Treatment: A grid of surface monitoring points Type 1 (S1) to monitor heave or settlement shall be established over any area of ground treatment. The spacing between points in both directions shall not be more than 15 feet. This grid shall extend at least 30 feet beyond the edges of the ground treatment zone. For structures/facilities, the minimum instrumentation shall be as shown on the Contract Drawings.
 - 3. Prior to Grouting/Ground Treatment, all manholes and other sub-surface chambers with 30 feet of grouting operations shall be opened, inspected and potential ingress pathways for grout shall be sealed using methods agreed with the Owner's Representative and the owner of the manhole/chamber.
- N. Frequency of Monitoring:

1. General requirements for facilities, structures, utilities, and Railroad infrastructure to be monitored by the Contractor shall be as specified in Section 02495 and the Contract Drawings.
 2. During Ground Treatment: Continuous monitoring, recording and reporting of movements during ground treatment trials and production treatment installation by Contractor.
- O. Conduct the Work so that no equipment, material, or debris will be placed on, drive across or otherwise come into contact with surface utilities, shallow buried utilities, manholes, duct banks, cable troughs or other similar facilities unless acceptance from the Owner's Representative is obtained. Physical barriers and surface markers shall be installed for the duration of the Works in the area to prevent such loading.
- P. Before the start of construction, complete any repairs or improvements to the condition of the existing facility, structure, utility or infrastructure, in accordance with the Work plan, required to ensure continued operation and stability during the Works.

3.02 ALLOWABLE SETTLEMENT AND HORIZONTAL DISPLACEMENT

- A. Non-Railroad Infrastructure: Maximum structure movement and/or angular distortion shall not exceed the limits shown below:

1. Buildings:

	Review Level	Alert Level
Total Settlement (in.)	0.5	1.0
Angular Distortion	1:1000	1:750
Horizontal Displacement (in.)	0.25	0.50

2. High Line Structure:

	Review Level	Alert Level
Total Settlement (in.)	0.5	1.0
Angular Distortion	1/1000	1/750
Horiz. Displacement (in.)	0.50	0.75

- B. Railroad Infrastructure: Maximum movement and/or angular distortion based on structural or track monitoring and/ or adjacent ground monitoring shall not exceed the limits shown below:

1. Tracks, Turnouts, and Switches: See Paragraph 3.05 and table at the end of this Section.
2. Reinforced Retaining Walls:

	Review Level	Alert Level
Total Settlement (in.)	0.50	1.0
Angular Face Distortion	1/1000	1/750
Horiz. Displacement (in.)	0.50	1.0

3. Masonry and Unreinforced Retaining Walls:

	Review Level	Alert Level
Total Settlement (in.)	0.30	0.60
Angular Face Distortion	1/1600	1/1400
Horiz. Displacement (in.)	0.30	0.60

4. Subway and Railroad Tunnel Structures:

	Review Level	Alert Level
Total Settlement (in.)	0.25	0.50
Horiz. Displacement (in.)	0.25	0.50

5. All Railroad utilities such as signals, lighting, catenary, and communication systems shall be maintained in operating condition.

3.03 ALLOWABLE GROUNDWATER DRAWDOWN

- A. Maximum groundwater drawdown outside the limits of the excavation shall be as specified in Section 02240.

3.04 RESPONSE LEVELS

- A. At Review Level, Contractor shall immediately undertake the measures defined in the Action Level Plan.
- B. Alert Level: Take all necessary steps so that the Alert Level is not reached. Contractor may be directed to suspend activities in the affected area with the general exception of those actions necessary to avoid reaching or exceeding the Alert Level.

3.05 RESPONSE RANGES FOR TRACKS, TURNOUTS, AND SWITCHES

- A. The limits of the Response Ranges are based on the Class III track rating (operating speed to 60-mph) for all rail tracks. See table at the end of this Section.
- B. Green Range: No response action required.
- C. Yellow Range: The lower limit of the Yellow Range is the Review Level, and is set at 75 percent of the Alert Level. When track movement reaches the Review Level, Contractor will immediately undertake the measures defined in the Action Level

- D. Red Range: PPV above 2.0 in/sec. Values in this range are not permitted. For PPV above 2.0 in/sec., MTA/NYCT shall be consulted for appropriate corrective action.
- E. Red Range: The lower limit of the Red Range is the Alert Level. This is set at the maintenance limit in accordance with Amtrak MW 1000. When track movement reaches the Alert Level, contingency measures must be implemented to immediately bring the track back into tolerance and assure safe operation. The upper limit of the Red Range is the maximum permitted out-of-tolerance for the operating track. This is set at the safety limit in accordance with Amtrak MW 1000.

3.06 RESPONSE RANGES FOR NO. 7 LINE SUBWAY TUNNELS

- A. The limits of the Response Ranges are based upon requirements of New York City Transit, and are set forth in this section. These values are pertinent for vibration generated by either blasting or pile driving.
- B. Green Range: Peak Particle Velocity (PPV) up to 0.5 in/sec above ambient. No response action required.
- C. Yellow Range: PPV above 0.5 in/sec above ambient up to 2.0 in/sec. If values are recorded in this range, review and evaluation will be conducted by Owner's Representative and NYCT Engineer. Mitigation procedures will be initiated for either blast design or pile driving procedures as appropriate.
- D. Red Range: PPV above 2.0 in/sec. Values in this range are not permitted.

3.07 RESPONSE RANGES FOR 11TH AVENUE VIADUCT STRUCTURE

- A. The limits of the Response Ranges are based upon requirements of New York City Department of Transportation, and are set forth in this section.
- B. Green Range: Dynamic Strain measured on the supports of the 11th Avenue Viaduct up to 150 microstrains. No response action required.
- C. Yellow Range: Dynamic Strain measured on the supports of the 11th Avenue Viaduct above 150 microstrains up to 500 microstrains. If values are recorded in this range, review and evaluation will be conducted by Owner's Representative. Mitigation procedures will be initiated for blast design.
- D. Red Range: Dynamic Strain measured on the supports of the 11th Avenue Viaduct above 500 microstrains. Values in this range are not permitted.

3.08 RESPONSE RANGES FOR HUDSON TUNNEL

- A. The limits of the Response Ranges are based upon recommendations described by the International Society of Explosives Engineers, and are set forth in this section.

- B. Green Range: Peak Particle Velocity (PPV) up to 2.0 in/sec. No response action required.
- C. Yellow Range: PPV above 2.0 in/sec up to 4.0 in/sec. If values are recorded in this range, review and evaluation will be conducted by Owner's Representative. Mitigation procedures will be initiated for either blast design or pile driving procedures as appropriate.
- D. Red Range: PPV above 4.0 in/sec. Values in this range are not permitted.

3.09 RESPONSE RANGES FOR HIGH LINE STRUCTURE

- A. The limits of the Response Ranges are based upon recommendations described by the International Society of Explosives Engineers, and are set forth in this section.
- B. Green Range: Peak Particle Velocity (PPV) up to 1.5 in/sec. No response action required.
- C. Yellow Range: PPV above 1.5 in/sec up to 2.0 in/sec. If values are recorded in this range, review and evaluation will be conducted by Owner's Representative. Mitigation procedures will be initiated for either blast design or pile driving procedures as appropriate.
- D. Red Range: PPV above 2.0 in/sec. Values in this range are not permitted.

3.10 ACTION LEVEL PLANS

- A. The Action Level Plan shall be a live document continuously updated to reflect changes in contact details for all key members of the organizations, including, but not limited to Amtrak Senior Management, Owner's Representative, Emergency Services, Railroad Operators, Utility Owners, Adjacent Structure Owners, Contractor, and Subcontractors.
- B. The Action Level Plan shall identify the actions to be taken at each response level/range for each element of the Work which may cause movement or member loads to exceed the response levels/ ranges and shall include as a minimum, the names of the responsible person for the activity currently being undertaken and the measures to be taken. The Action Level Plan, as a minimum, shall also identify all key structures and utilities throughout the Site and define the party responsible for each structure. The Action Level Plan shall also identify the resources required for each Alert Level including the notification required if action is taken at each level.
- C. The plans of action shall include proposed Response Levels for instruments on facilities for which limits have not been specified in Section 02254.
- D. The general Action Level Plan shall form the basis of meetings with the Owner's Representative to discuss response action(s) as specified elsewhere herein. This

plan of action shall be positive measures by Contractor to perform any or all of the followings as applicable:

1. Limit further excavation-induced structure, Railroad facility, utility and ground movements.
 2. Limit further drop in groundwater and piezometric levels.
 3. Control vibrations.
 4. Maintain loads in structural members within design limits.
 5. Maintain the structural integrity of adjacent structures and utilities.
 6. Maintain Railroad operations and roadway traffic.
- E. As a minimum, the measures identified in Division 1 shall be incorporated in the Action Level Plan. Review and propose additional measures that are considered necessary to meet the requirements of the Work for the review of the Owner's Representative.
- F. At a minimum, one copy of the Action Level Plan shall be held at each excavation face and at Contractor's Office.
- G. Conduct a workshop before starting micro-tunneling, before installing an excavation support system at a location, before commencing ground treatment at a location, and as otherwise required, to inform and train project staff to ensure understanding of plans that delineate the actions to be taken when settlement indicators and other instrument show that response levels have been reached. Include key management and supervisory staff from Contractor, specialty Subcontractor(s), Railroads, and Owner's Representative.

Railroad Infrastructure Response Ranges							
		Values For Green Range (in)		Values For Yellow Range (in)		Values For Red Range (in)	
		Tracks	Turnouts & Switches	Tracks	Turnouts & Switches	Tracks	Turnouts & Switches
Track Surface	The runoff in any 31' of rail at the end of a raise may not be more than	0 to 1-1/8	0 to 1-1/8	1-1/8 to 1-1/2	1-1/8 to 1-1/2	1-1/2 to 2	1-1/2 to 2
	The deviation from uniform profile on either rail at the mid-ordinate of a 62' chord may not be more than	0 to 1-1/4	0 to 7/8	1-1/4 to 1-5/8	7/8 to 1-1/8	1-5/8 to 2-1/4	1-1/8 to 2-1/4
	The deviation from zero crosslevel at any point on a tangent may not be more than	0 to 7/8	0 to 5/8	7/8 to 1-1/4	5/8 to 7/8	1-1/4 to 1-3/4	7/8 to 1-3/4
	The reverse elevation on curves may not be more than	0 to 1	0 to 5/8	1 to 1-3/8	5/8 to 7/8	1-3/8 to 1-3/4	7/8 to 1-3/4
	The difference in crosslevel between any two points less than 62' apart may not be more than	0 to 1-1/8	0 to 3/4	1-1/8 to 1-1/2	3/4 to 1	1-1/2 to 2	1 to 2
Alignment	The deviation of the mid-ordinate from a 62' chord may not be more than	0 to 7/8	0 to 5/8	7/8 to 1-1/4	5/8 to 7/8	1-1/4 to 1-3/4	7/8 to 1-3/4
	For curved track, the deviation of the midordinate from a 31' chord may not be more than	0 to 5/8	0 to 1/2	5/8 to 7/8	1/2 to 5/8	7/8 to 1-1/4	5/8 to 1-1/4

Note: Refer to Amtrak MW 1000 for a more detailed description/illustration of the maximum allowable movements in various track geometries. Measured movement values exceeding the Review Level during excavations/construction will be reviewed and evaluated by the Owner's Representative.

3.11 PRE-CONSTRUCTION CONDITION SURVEY

- A. Prior to construction, conduct a pre-construction condition inspection survey of all existing structures and facilities within the Zone of Influence of the Work. Expand the scope of the surveys to include existing tunnels, structures, manholes, and facilities that may be impacted by construction activities. The inspection forms the basis from which negative impacts such as new cracks, new damage, new settlement, and worsening of existing progressive cracks will be measured.
- B. Prepare a Condition Survey Form in a format approved by the Owner's Representative. The Form shall provide a unique identity control number for each structure and facility, and provide space for listing general information, such as location details and structure type, as well as particular information on materials, condition, existing damage, aperture and persistence of cracks, and disrepair observed during visual inspection. The Form shall also facilitate recording post-construction inspection information. The Form shall be signed by the Contractor's design engineer, as well as the owner of the building or facility.
- C. Inspect both external and internal conditions, where applicable.
- D. Document the existing pre-construction condition of existing structures and facilities by identifying, measuring and recording all visible cosmetic and structural defects using sketches, photographs and videos. Videos may include audio commentary. Document length, size, thickness and type of the defects.
- E. Document the existing inclinations of building façades and retaining walls.
- F. Video storm drains, sanitary lines, and other non-pressure utilities.
- G. Document the pre-construction conditions of sewers using methods approved by the Owner's Representative.
- H. Video each project area, which will be excavated or which has the potential to be disturbed by the Contractor's operations. Specific areas include, but are not limited to:
 - 1. Areas requiring utility work.
 - 2. Paved and unpaved areas, which will be entered by vehicles or equipment.
 - 3. Other areas that may be impacted by the Work, including work staging areas and field offices, as determined by the Owner's Representative.
- I. Photographs to be accompanied by sketches or descriptions that indicate the location and direction of each photograph.
- J. Use high definition video documentation, and show existing conditions and highlight, where possible, existing cracks, deteriorated concrete, exposed or corroded reinforcement, cracked or broken brick or mortar, and other signs of distress. For utilities, conduct the visual survey when the greatest extent of interior

is exposed. Provide supplementary artificial lighting as needed. Include annotation with location and facility nomenclature, which describes any areas of distress over the video and time code superimposed on the video.

- K. For each existing structure and facility inspected, provide a Pre-Construction Survey Report following completion of the survey, which will contain all documentation associated with the survey, and is signed and sealed by Contractor's designer and the owner of the inspected facility. As a minimum include the following data:
1. Date surveyed.
 2. Type of structure or facility, and use.
 3. Key plan indicating the location of the structure or facility with respect to the Work.
 4. Year constructed.
 5. Foundation type, where applicable.
 6. Description of structure or facility.
 7. Description of interior finishes, where applicable.
 8. Sketches, photographic and video record of all existing damages with detailed description of any damage and its locations.
 9. Number, location and photo of crack displacement gages installed, where applicable.
 10. Obstructions limiting the condition survey.
 11. Record of access denied, where applicable.
 12. Inclinations of the building façades and retaining walls.

3.12 POST-CONSTRUCTION CONDITION SURVEY

- A. Following substantial completion of construction, conduct Post-Construction Condition Surveys to compare the post-construction conditions with the conditions of the pre-construction survey.
- B. Conduct the Post-Construction Survey at each structure and facility where a Pre-Construction Survey was conducted.
- C. Perform Post-Construction Condition Surveys using the same methods, scope and requirements as the Pre-Construction Condition Surveys.

- D. Prepare a Post-Construction Survey Report for each structure and facility inspected, comparing the conditions with those observed during the Pre-Construction Condition Survey.

3.13 RECTIFICATION OF DAMAGE

- A. Immediately notify the Owner's Representative when damage is identified.
- B. Perform borings, probes, test pits, CCTV inspections, testing and other work, as required, to identify and locate known or suspected damage to a utility or other facility. Contractor shall be responsible for the damage, unless it can prove to the satisfaction of the Owner's Representative a pre-existing damaged condition or damage by others.
- C. Damage shall be rectified as rapidly as possible in accordance with Detailed Work Plan (or prior to submission by agreement with the Owner's Representative). Make available all necessary materials, equipment, and personnel

END OF SECTION

PART 1 - GENERAL**1.01 SECTION INCLUDES**

- A. Requirements for furnishing all labor, materials, tools and equipment, and performing all operations necessary for underpinning the existing High Line Structure.
- B. At all times, Contractor shall be solely responsible for maintaining the safety, stability, and integrity of the structure. Contractor shall be responsible for any damage due to the Work and for any corrective action or repairs needed to restore any damaged structure or facility to its condition before the start of Work.

1.02 REFERENCED SECTIONS

- A. Section 03300 – Cast in Place Concrete
- B. Section 05120 – Structural Steel
- C. Section 02495 – Instrumentation
- D. Section 02266 – Slurry Walls
- E. Section 02485 – Secant Pile Walls
- F. Section 03100 - Concrete Formwork
- G. Section 03200 - Concrete Reinforcement
- H. Section 02465 - Drilled Shaft Foundations
- I. Section 09900 - Painting and Finishing

1.03 CITED STANDARDS

None Noted

1.04 NOTED RESTRICTIONS

Do not begin work before the following conditions have been met:

- 1. Required submittals have been reviewed by the Owner's Representative.
- 2. Pre-construction survey of the High Line Structure has been completed and submitted for review by the Owner's Representative.
- 3. Installation of geotechnical instrumentation monitoring program has been completed and initialized in accordance with Section 02495.
- 4. The allowable construction work hours on the High Line structure and columns for column load transfer is 11PM to 7AM, unless otherwise approved of by NYC Parks/Friends of the High Line.

1.05 QUALITY CONTROL

- A. The Work of this Section is specialized. Underpinning work shall be done by an organization regularly engaged in underpinning work. The organization shall have a minimum of five years' experience and shall have successfully completed a minimum of five similar projects. Assign an experienced engineer who has been in responsible charge of underpinning operations for a minimum of five years. The engineer shall be present at the Work Site at all times during the underpinning operations. Do not commence Work until the organization and field engineer have been approved.
- B. The contractor shall engage the services of a Professional Engineer licensed in the State of New York to design and detail the underpinning work. The PE shall be available for consultation in interpreting his plans and in the resolution of problems which may arise during the performance of the work.
- C. Provide the services of a Land Surveyor licensed in the State of New York to conduct a precision survey as part of the underpinning jacking/installation monitoring program. The survey shall be to an accuracy of 0.001-foot.
- D. Take all necessary precautions for the protection of personnel and perform the Work in a manner to prevent settlement of, or damage to the High Line Structure and adjacent railways, roadway, sidewalks, walls, utilities, ducts, sewers, and structures on the properties contiguous to the Work Site.
- E. Provide necessary equipment and personnel to make instrument readings during excavation and underpinning.

1.06 SUBMITTALS

- A. All submittals including, but not limited to, Contractor-prepared drawings and computations, including loads shall be signed and sealed by a Professional Engineer licensed in the State of New York.
- B. Work Force: A minimum of 60 working days before commencement of any operations related to the underpinning, submit documentation demonstrating that the organization proposed to perform the underpinning work and the proposed underpinning supervisor meet the experience requirements herein.
- C. At least 60 days before commencement of Work, submit the following:
 - 1. Scheduling of the times and durations of any outages of utility and other services to affected properties as well as of the operation of systems within the Work Site.
 - 2. Schedule of required High Line Structure closings during the jacking operation.
- D. At least 60 days before commencement of Work, submit shop and working drawings: Shop and working drawings shall include, but not be limited to, the

following:

1. A detailed separate underpinning schedule in CPM format giving sequence of construction and proposed start and completion dates. Show interface with other construction activities; update to reflect changes as the underpinning work progresses.
2. Show method, staging, and necessary details for the construction of all underpinning and temporary and permanent supports.
3. Submit analysis and design computations to support working and shop drawings.
4. Details of proposed enclosure to keep unauthorized persons out of Work Site.
5. Details of temporary relocation of underground utilities affected by the underpinning work, and for maintenance of services.
6. Details of proposed underpinning jacking/installation monitoring program including description of all equipment and gauges.
7. Bearing details to indicate how loads from jacks will be distributed.
8. Details of proposed method for temporarily supporting the columns during the times that jacking is not being performed. Show details of shims or wedges to be used.
9. Data on jacks including capacities, details of monitoring of gauges and elevations, and method of obtaining fixed reference points.
10. Details and methods of bracing the column against horizontal displacement.
11. Details and methods of bracing the affected structures against horizontal movement.
12. Details of procedures for transfer of the column loads onto the excavation walls, and for transfer of the column loads to the final structure.
13. Details for monitoring Highline Structure, as specified herein and in Section 02495, and as shown on the Contract Drawings.
14. In addition, shop and work drawings shall include any necessary or required related work including, but not limited to, electrical or mechanical construction, renovations, cutting and/or packing, temporary support, waterproofing, safety measures, and associated items of Work.

E. Jacking Gauge Calibration:

1. Submit the qualifications for a calibration testing laboratory

2. No more than 14 days before start of use for underpinning, submit calibration curve of each pressure gauge and jack combination certified by the accepted testing laboratory.
- F. Where additional underpinning is required, prepare detailed shop and working drawings outlining proposed procedures and submit to the Owner's Representative.

1.07 DELIVERABLES

- A. Records of jacking as specified herein.
- B. Provide a copy of each jacking load plot to the Engineer.
- C. Provide copies of instrumentation readings to the Engineer within 24 hours after readings and measurements have been made.

PART 2 - PRODUCTS

2.01 JACKS

- A. Jacks shall be of the hydraulic type and shall have a capacity equal to not less than two times the required jacking load.
 1. Coordinate and integrate the jacks and all the accompanying hydraulic components in a manner that allows the jacks to be used individually or simultaneously.
 2. Equip jacks with a mechanical piston-locking device capable of maintaining the piston in any position at the full-jack capacity.
 3. Provide on-site the required number of jacks to perform the underpinning work.
 4. Provide an additional complete set of jacks including all required pumps, hoses, valves, and gauges as standby.
- B. Calibrate all jacks in a qualified testing laboratory before they are put into service.
 1. Repeat this calibration if any jacks are taken out of service that may potentially be reused.
 2. When not in use, protect jacks from damage due to construction activities and weather conditions.

PART 3 - EXECUTION

3.01 GENERAL

- A. Construction methods shall follow the procedures indicated on the reviewed working and shop drawings.

- B. In addition to the requirements of the Contract, consult the records of adjacent construction and of existing utilities and their connections, and perform a field condition survey on the structure to be underpinned in accordance with the requirements specified herein, and document actual dimensions and existing physical condition.
 - 1. The start of underpinning shall be contingent on the results of the investigation of existing conditions.
 - 2. Be cognizant of conditions and limitations that may influence the underpinning work and take proper measures to account for these conditions.
- C. Do not proceed with underpinning work until unsatisfactory conditions have been corrected in an acceptable manner.
- D. Be responsible for providing shoring and bracing as may be needed for prevention of movement and to protect affected structures.
- E. A Pre-Construction Condition Survey shall be conducted by the contractor. The results of the survey shall be submitted to the Owner's Representative.
- F. All work related to support of excavation shall comply with section 02266 – Slurry Walls, section 02465 – Drilled Shaft Foundations, and section 02485 – Secant Pile Walls.

3.02 MATERIALS

- A. Construction methods and materials for cap beam work shall be as specified in section 03300 - Cast In Place Concrete, section 03100 – Concrete Formwork, and section 03200 – Concrete Reinforcement.
- B. Construction methods and materials for structural steel work shall be as specified in Section 05120.

3.03 MONITORING REQUIREMENTS DURING JACKING

- A. Establish fixed reference points not subject to movement and not part of the underpinned structure.
- B. Use dial gauges with accuracy of 0.01-inch and a gauge range of plus or minus 2-inches to monitor the jacking operation.
- C. Use a minimum total of five dial gauges per jacking column. Use one dial gauge to measure the vertical movement at the column baseplate; two dial gauges to measure the vertical movement at the column, and one dial gauge to measure the horizontal movement in each direction above the jacking bracket. Provide additional dial gauges, as needed, to monitor the top of the support of excavation wall at the location where the underpinning load is applied.

- D. All dial gauges shall be calibrated by an accepted calibration laboratory.
- E. During jacking operations, read and record all dial gauges after each jacking load increment is applied to the column.
- F. Make a plot of load versus displacement for each dial gauge.
- G. Monitoring during jacking shall be performed by the contractor in accordance with Section 02495 and the data shall be submitted to the Owner's Representative.

3.04 LONG-TERM MONITORING REQUIREMENTS AFTER LOAD TRANSFER

- A. Long term monitoring shall be performed by the contractor and the data will be submitted to the Engineer in accordance with Section 02495.

3.05 CONDITIONS OF LOAD TRANSFER

- A. Jacks shall only be used for transferring the load; at all other times, use positive means to support the columns.
- B. Perform each jacking of piers simultaneously in increments of 25-, 25-, 15-, 15-, 10-, and 10-percent of the estimated load until either 100-percent of the load is achieved, or lifting of the pier occurs.
 - 1. In case the jacking force reaches the estimated load with no sign of pier movement, increase the jacking force in increments of 5-percent of the estimated load until the first sign of the pier lifting appears or 125-percent of the estimated load, whichever occurs first.
 - 2. Lifting of the piers are defined as when the piers moves upward by 1/32-inch.
 - 3. Perform monitoring continuously during jacking, and keep wedges tight to provide full support in case of jack malfunctioning.
 - 4. At the conclusion of the load transfer operation, place wedges tight and secure.
- C. During jacking and transfer of load the Owner's Representative shall be present.
- D. Take readings continually to detect immediately any horizontal or vertical movement during jacking operations.
- E. Upward or horizontal movement in excess of the allowable limit for the existing structure will be cause for immediate termination of the jacking operation.
- F. Inform the Owner's Representative if any movement is detected, and all steps taken in response.
- G. Stop Work, notify the Owner's Representative, and take immediate remedial

action if movement or deflection in excess of 1/8-inch of the existing column or interconnecting members occurs during progress of the Work, or if there is any evidence of damage to or overstressing of the High Line Structure.

- H. Upon completion of jacking, take daily readings of the measurement points for a period of 30 days; thereafter, once a week for the duration of the Work or as required if any movement is detected.

3.06 PROTECTION OF STRUCTURAL STEEL

- A. Repaint existing steel upon completion of the removal of all underpinning components in conformance with Section 09900.

3.07 RESTORATION

- A. Repair any damage resulting from the Work.
- B. Add requirements for removal and disposal of underpinning elements after the column loads are transferred to the final structure.

END OF SECTION

Attachment 4

Letter from Silman on behalf of Friends of the High Line



**Structural
Engineers**

32 Old Slip, 10th Floor
New York, NY 10005
212 620 7970
silman.com

March 28, 2018

Salmaan Kahn
Friends of the High Line
820 Washington Street
New York, N.Y. 10014

RE: Amtrak Gateway Project
Silman Project No 17514

Dear Salmaan:

This letter is in reference to our final review of the revised construction documents for the Amtrak Gateway project adjacent to and below the High Line. Previously in our March 14, 2018 letter, we requested clarification on the column on drawing S 901 that appeared to be hanging off the tunnel wall. We missed the transfer beam in the detail and plan that clearly makes it shown that these columns are in fact properly supported. We apologize for any confusion. They have also added further documentation to the notes reminding the contractor that they must submit final temporary works designs to us for approval prior to implementation. Based on these clarifications, we can now approve the design as to how it impacts the High Line structure.

Please note that this approval does not warrant any responsibility on our part for the construction of the Gateway Project and how it may ultimately affect the High Line as actual construction practices may vary at the time of construction. Ultimate responsibility for safely constructing next to the High Line and protecting it adequately, firmly lies with the Gateway Design and Construction team.

If we can be of any further assistance on this matter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Tortorella", written over a horizontal line.

Joseph F. Tortorella
President

CC: Michael Bradley (Parks)

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Attachment 5

FRA's letter to NYC Parks dated April 19, 2021



U.S. Department
of Transportation

Federal Railroad
Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

April 19, 2021

Mr. David Cuff
Director of Environmental Review
NYC Parks
803 5th Avenue
New York, NY 10065

Re: Western Rail Yard Infrastructure Project, New York County, NY
Coordination for Draft Section 4(f) Evaluation and *De Minimis* Impact

Dear Mr. Cuff:

This letter is in follow up to our conversation on April 13, 2021 and continues the U.S Department of Transportation (USDOT) Federal Railroad Administration's (FRA) consultation with your office pursuant for the Western Rail Yard Infrastructure Project for the Western Rail Yard Infrastructure Project (Project). The Project Sponsor, a joint venture between WRY Tenant LLC¹ and the National Railroad Passenger Corporation (Amtrak), is seeking federal financial assistance to aid in the design and construction of the project through the Department of Transportation (DOT). The FRA is preparing a Draft Environmental Impact Statement (DEIS) in accordance with the National Environmental Policy Act (NEPA) to evaluate potential environmental impacts. The Project consists of construction of (1) a structural platform (Platform) and (2) a railroad right-of-way preservation tunnel encasement (Tunnel Encasement). Construction of this infrastructure would ensure future transportation-related interests, and allow for privately-funded mixed-use development and public open space (Overbuild) to be constructed above the Platform. The Overbuild is not part of the Project.

The purpose of this letter is to notify NYC Parks regarding FRA's proposed findings related to the Project's potential impacts to the High Line, which is a protected property under Section 4(f) of the USDOT Act of 1966 (49 U.S.C. 303 and 23 U.S.C. 138) (Section 4(f)). This letter defines the scope of the Project as it pertains to the High Line; identifies the requirements of Section 4(f) and the characteristics that qualify the High Line for Section 4(f) protection; provides a draft pre-decisional description of the potential impacts to the High Line resulting from the Project; and discusses the opportunities for further coordination between FRA and NYC Parks.

¹ WRY Tenant is an affiliate of Related Companies, LP.



Section 4(f)

Section 4(f) is a federal law that protects publicly-owned parks, recreation areas, wildlife and waterfowl refuges and public or private historic sites. Under Section 4(f), a USDOT agency may only approve the use of land from a property protected by Section 4(f) if there is no prudent and feasible alternative to using the land and the project includes all possible planning to minimize harm, unless it is a *de minimis* impact, or an exception applies. An impact to a publicly-owned park, recreation area, or wildlife and waterfowl refuge may be determined to be *de minimis* if the transportation use of the Section 4(f) property, including incorporation of any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f). For historic sites, a *de minimis* impact means that FRA has determined (in accordance with 36 CFR part 800) that either no historic property is affected by the project or that the project will have “no adverse effect” on the historic property (23 CFR 774.17). FRA can make a *de minimis* impact finding in accordance with 23 CFR 774.3(b) when the requirements outlined in 23 CFR 774.5(b) are fulfilled.

The High Line is a publicly-owned park and National Register of Historic Places (NRHP) eligible historic site that extends 1.45 miles along the viaduct structure of a former rail freight line, originally constructed by the New York Central Railroad. For the purposes of Section 4(f), the officials with jurisdiction are NYC Parks and the New York State Historic Preservation Office. The activities, features, and attributes that qualify the High Line for Section 4(f) protection as a park include paved walking area, access points, seating, and landscaped areas of native plantings evocative of the plants that grew on the abandoned freight right-of-way prior to its conversion to a park. The features and attributes that qualify the High Line for protection under Section 4(f) as an historic site are continued presence of the High Line and its historic integrity, which serve as physical reminders of one of Manhattan’s important industrial transportation corridors.

Potential Impacts

As described in the attached draft excerpt from the working pre-decisional draft of the Section 4(f) Evaluation, elements of the Project scope would result in potential impacts to the High Line. These impacts would be temporary, occur during construction, and would not result in permanent physical alterations.

Construction activities would include temporary underpinning of a segment of the High Line, where the Tunnel Encasement would pass beneath it along West 30th Street, between Eleventh and Twelfth Avenues. Underpinning is a process in which structural support (often using piles) is added to support an existing foundation to allow for safe construction adjacent or below the supported structure. The anticipated temporary underpinning would affect one approximately 100-foot long portion of the High Line within the Project site boundaries. The temporary support would be removed once the load-transfer to the new permanent support for the Tunnel Encasement is complete. All underpinning work below the High Line would be underground. The duration of the underpinning construction would be approximately four months, comprising two months for underpinning installation and two months for removal. The underpinning would be in place for an additional 16 months, during excavation and construction of the Tunnel



Encasement. The underpinning work would likely be carried out through a local construction permit. There would be no change in ownership of the land or the High Line structure.

Other construction activities would occur in close proximity to the High Line; these include staging areas within the Project site, for approximately five years; cut-and-cover excavation of soil and rock for the Tunnel Encasement, and construction of the concrete Tunnel Encasement, for approximately 28 months; and installation of deep footings (caisson drilling), reinforced building foundations, and a concrete slab for the Platform, for approximately five years. During these construction activities, the High Line and its protected park features (egress points, walkways, and benches) would not be closed to the public during typical park hours, and construction of the Project would not preclude the public from using the High Line. These other temporary activities would occur in close proximity to the High Line and could be visible from the park, but would not be staged from or result in physical alternations to or occupation of the park. The construction activities would be noticeable to people on nearby portions of the High Line and could be temporarily disruptive; however, in the same period while the Project is under construction, extensive construction would also be occurring in the surrounding area for other projects.

Worst-case noise levels at the High Line resulting from construction of the Preferred Alternative, projected using the FTA general assessment methodology, would be up to 94 dB(A) during construction for the Tunnel Encasement and up to 82 dB(A) during Platform construction. The maximum predicted noise level increment at this receptor is 23 dB(A) and would occur during hoe ram use periods for the first 20 months of excavation for Tunnel Encasement. During non-hoe ram use periods and the remaining 14 months of Tunnel Encasement construction, maximum predicted noise level increments would be approximately 18 dB(A) resulting from the use of drill rigs. The worst-case noise levels during Tunnel Encasement construction would not extend throughout the full 1.45-mile length area of the High Line, most of which would be substantially distanced from the construction. An approximately 0.5-mile-long portion of the High Line would experience elevated noise levels. Construction of the Project would not alter any of the historic or public park features of the High Line, and the underpinning of the High Line underground foundations would not preclude the public from using the High Line during construction.

Coordination Process

Because the High Line is both a historic site and a park resource, FRA must find that the criteria for both parks and historic sites are met in order to reach a conclusion that the impacts are *de minimis*. The New York State Historic Preservation Officer (NYSHPO) concurred on February 11, 2021, that the Project would result in a Section 106 finding of no adverse effect on historic properties, provided certain conditions imposed on the Project are met, including developing a construction plan to protect the High Line and NYSHPO review of the design for construction activities that may affect the High Line. In addition, after taking into account measures to avoid, minimize, and mitigate harm to the High Line park, FRA proposes that the Project would not adversely affect the activities, features, and attributes of the park.

FRA's Section 4(f) regulations provide the public an opportunity to comment on *de minimis* impacts to public parks. The comment period for the *de minimis* impact to the High Line will



coincide with the 45-day public comment period on the DEIS. The public comment period is anticipated to be May through June 2021. After consideration of public comments and consultation with NYC Parks, FRA would request concurrence from NYC Parks on FRA's *de minimis* impact finding.

Prior to publication of the DEIS, FRA is providing NYC Parks with the attached section of the working pre-decisional draft of portions of the Section 4(f) Evaluation related to the High Line for review. FRA seeks to continue consultation with NYC Parks regarding Section 4(f) and the High Line at the scheduled meeting on April 27, 2021.

Should you have any questions or concerns regarding this letter, please contact Andrea Poole at WRYProject@dot.gov.

Sincerely,

Marlys Osterhues
Chief, Environment and Project Engineering Division
Federal Railroad Administration

Attachment

cc: Colleen Alderson, NYC Parks
Mike Bradley, NYC Parks
Peter Schlicker, NYC Parks (Attorney Advisor)

the working pre-decisional draft of the Section 4(f) Evaluation, which comprises Chapter 21 of the Draft EIS. **21.4 POTENTIAL USE OF SECTION 4(F) PROPERTIES**

21.4.1 High Line

The High Line is a NRHP-eligible historic site under the jurisdiction of the NYSHPO, as well as a park and recreational resource under the jurisdiction of NYC Parks. It has been determined NRHP-eligible by NYSHPO as a significant transportation structure important to New York City's 20th century industrial development. The section of the High Line within the Study Area is a predominantly paved walkway with limited plantings, some seating areas, and egress points. Recreational activities occurring within the High Line include walking and running.

Construction activities for the Preferred Alternative would include temporary underpinning of a segment of the High Line, where the Tunnel Encasement alignment would cross beneath the portion of the High Line that runs along West 30th Street between Eleventh and Twelfth Avenues (see **Figure 21-2**).

Underpinning is a process in which structural support (often using piles) is added to support an existing foundation to allow for safe construction adjacent to or below the supported structure. The Preferred Alternative would include temporarily underpinning the High Line at this location to protect the structural integrity of the resource during construction of the Tunnel Encasement. The duration of the underpinning construction would be approximately four months, comprising two months for underpinning installation and two months for underpinning removal. The underpinning would be in place for an additional 16 months, during excavation and construction of the Tunnel Encasement. During the time of constructing the Tunnel Encasement, the High Line is envisioned to be supported on steel beams spanning the open cut for the Tunnel Encasement. The anticipated temporary underpinning would affect only one approximately 100-foot-long portion of the High Line within the Project Site boundaries, and for the limited period defined above; the remainder of the 1.45-mile-long, 6.73-acre resource would not be affected by project construction.

The temporary support would be removed once the load-transfer to the new permanent support for the Tunnel Encasement is complete. All underpinning work below the High Line would be underground. The foundations for the viaduct structure are part of the resource, for which NYC Parks has jurisdiction; however, the land within which the foundations are located is owned by MTA. The underpinning work would likely be carried out through a construction permit from NYC Parks. There would be no change in ownership of the land or the High Line structure. The High Line would remain open and publicly accessible during this temporary construction activity.

The portion of the High Line subject to underpinning would be inaccessible during construction activities related to the underpinning; however, the underpinning work is anticipated to occur during hours when the High Line is closed to the public. Construction activities would be less than one week in duration, throughout the two month periods for installation and removal of the underpinning. The Project Sponsor, has committed to include a specification in construction documents indicating the following: the only allowable construction work hours on the High Line structure and columns for underpinning work (column load transfer) are between 11 PM and 7 AM—when the High Line is not open—unless otherwise approved by NYC Parks and Friends of the High Line. As a result, it is likely the Project Sponsor

will need to apply to NYCDOB for approval of the hours for the underpinning work. Therefore, the High Line and its park features within the Study Area (egress points, walkways, and benches) would not be closed to the public during typical park hours (currently 7 AM to 7 PM Monday through Friday with no reservations required, and 10 AM to 6 PM Saturday/Sunday with reservations required). The underpinning for the Preferred Alternative would not preclude the public from using the High Line.

Other construction activities for the Preferred Alternative would occur in close proximity to the High Line; these include staging areas within the Project Site, for approximately five years; cut-and-cover excavation of soil and rock for the Tunnel Encasement, and construction of the concrete Tunnel Encasement, for approximately 28 months; and installation of deep footings (caisson drilling), reinforced building foundations, and a concrete slab for the Platform, for approximately five years. During these construction activities, the High Line and its protected park features within the Study Area (egress points, walkways, and benches) would not be closed to the public during typical park hours, and construction of the Preferred Alternative would not preclude the public from using the High Line.

These other temporary construction activities for the Preferred Alternative would occur in close proximity to the High Line and could be visible from the park, but would not be staged from or result in physical alterations to or occupation of the park. The Eleventh Avenue access point to the High Line would not be affected. The construction activities would be noticeable to people on nearby portions of the High Line and could be temporarily disruptive; however, in the same period while the Preferred Alternative is under construction, extensive construction would also be occurring in the surrounding area for other projects. Overall, construction activities for the Preferred Alternative would not result in an adverse visual quality impact (see Chapter 11, “Aesthetics and Visual Quality”).

As detailed in Chapter 8, “Noise and Vibration,” worst-case noise levels at the High Line resulting from construction of the Preferred Alternative, projected using the FTA general assessment methodology, would be up to 94 dB(A) during construction for the Tunnel Encasement and up to 82 dB(A) during Platform construction. The maximum predicted noise level increment at this receptor is 23 dB(A) and would occur during hoe ram use periods for the first 20 months of excavation for Tunnel Encasement. During non-hoe ram use periods and the remaining 14 months of Tunnel Encasement construction, maximum predicted noise level increments would be approximately 18 dB(A) resulting from the use of drill rigs. These maximum predicted incremental changes in noise levels would occur at the High Line west of Eleventh Avenue, as shown in **Figure 8-2**, and would not affect the entire length of the High Line. As noted in Chapter 8, the predicted construction noise levels would exceed nuisance levels, as defined by the *CEQR Technical Manual*, and may interfere with speech while construction equipment is in use. While the High Line would not experience construction noise levels exceeding FTA construction noise impact thresholds for commercial/industrial areas, the construction noise levels at the High Line would constitute an adverse noise impact under *CEQR Technical Manual* guidelines.

The worst-case noise levels during Tunnel Encasement construction would not extend throughout the full 1.45-mile length / approximately 6.73-acre area of the High Line, most of which would be substantially distanced from the construction work areas associated with the Preferred Alternative. An approximately 0.5-mile-long portion / 1.2-acre portion, of the High Line would experience elevated noise levels. In addition to the historic significance of the viaduct structure itself, the features and activities that qualify the portion of High Line within the Study Area for protection under Section 4(f) are the walking and running that occur on the paved walkway; these active recreational uses are not noise-

sensitive. The High Line has not been identified as a publicly-accessible outdoor area requiring serenity and quiet.² At portions of the High Line south of 30th Street (i.e., 630 feet from the center of the nearest work area), noise levels would not exceed 74 dB(A) and would no longer exceed nuisance levels or have the potential to interfere with speech communication.

Tunnel Encasement construction is not anticipated to occur on weekends, leaving the High Line available for use without the effects of Tunnel Encasement construction noise during weekend times.

Upon completion of construction, the Preferred Alternative would include one permanent below-grade structure (the Tunnel Encasement) and one new above-grade structure (the Platform) in proximity to the portion of the High Line that extends through the Project Site. A portion of the Tunnel Encasement would be located directly beneath one segment of the High Line along West 30th Street on the Project Site, and the Platform would be located directly adjacent to the segment of the High Line along Twelfth Avenue on the Project Site. As described in Chapter 3, “Alternatives,” the Tunnel Encasement would be a buried structure, and its presence would not be visible from the High Line or affect the protected features and activities in the park (paved walkway, egress points, and benches). The Platform would be minimally visible above-grade separate from the Overbuild, which would be constructed above it. The Platform would be set back from the edge of the High Line park by approximately five feet (per a requirement of the New York City Zoning Resolution), and thus may also be minimally visible in elevated views from adjacent portions of the High Line. Furthermore, as described in detail in Chapter 5, “Land Use, Land Planning, and Property,” the area around the Project Site and the High Line is currently undergoing substantial redevelopment, and by the completion of the Preferred Alternative, many high-rise buildings would be present within this area, changing the visual context of this resource. The operational Tunnel Encasement and Platform would not result in air quality or noise impacts on the High Line.

The CEPP would be required to meet the guidelines set forth in NYCDOB’s *TPPN #10/88*, the *Protection for Landmarked Buildings* guidance document of the LPC, and the National Park Service’s *Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction*.

Construction of the Preferred Alternative would not alter any of the public park features of the High Line, and the underpinning of the High Line underground foundations would not preclude the public from using the High Line during construction. In consideration of the avoidance, minimization, and mitigation measures identified for the temporary underpinning and the projected noise at the High Line during construction of the Preferred Alternative, as discussed in Section 21.7, FRA intends to apply Section 4(f) *de minimis* for impacts to the High Line.

21.7 Avoidance, Minimization, and Mitigation Measures

² The *CEQR Technical Manual* identifies “outdoor areas requiring serenity and quiet” as a receptor type for noise exposure guidelines. “Outdoor areas requiring serenity and quiet” are further defined as “Tracts of land where serenity and quiet are extraordinarily important and serve as important public need, and where the preservation of these qualities is essential for the area to serve its intended purpose. Such areas could include amphitheaters, particular parks or portions of parks, or open spaces dedicated to or recognized by appropriate local officials for activities requiring special qualities of serenity and quiet. Examples are grounds for ambulatory hospital patients and patients and residents of sanitariums and nursing homes.” (2014 *CEQR Technical Manual*, Chapter 19, Table 19-2)

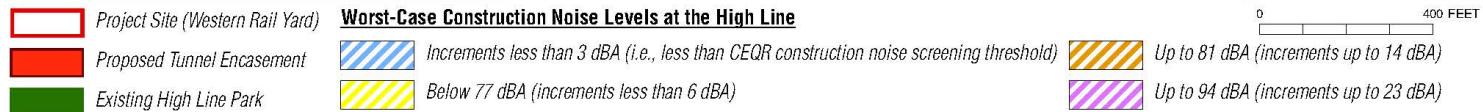
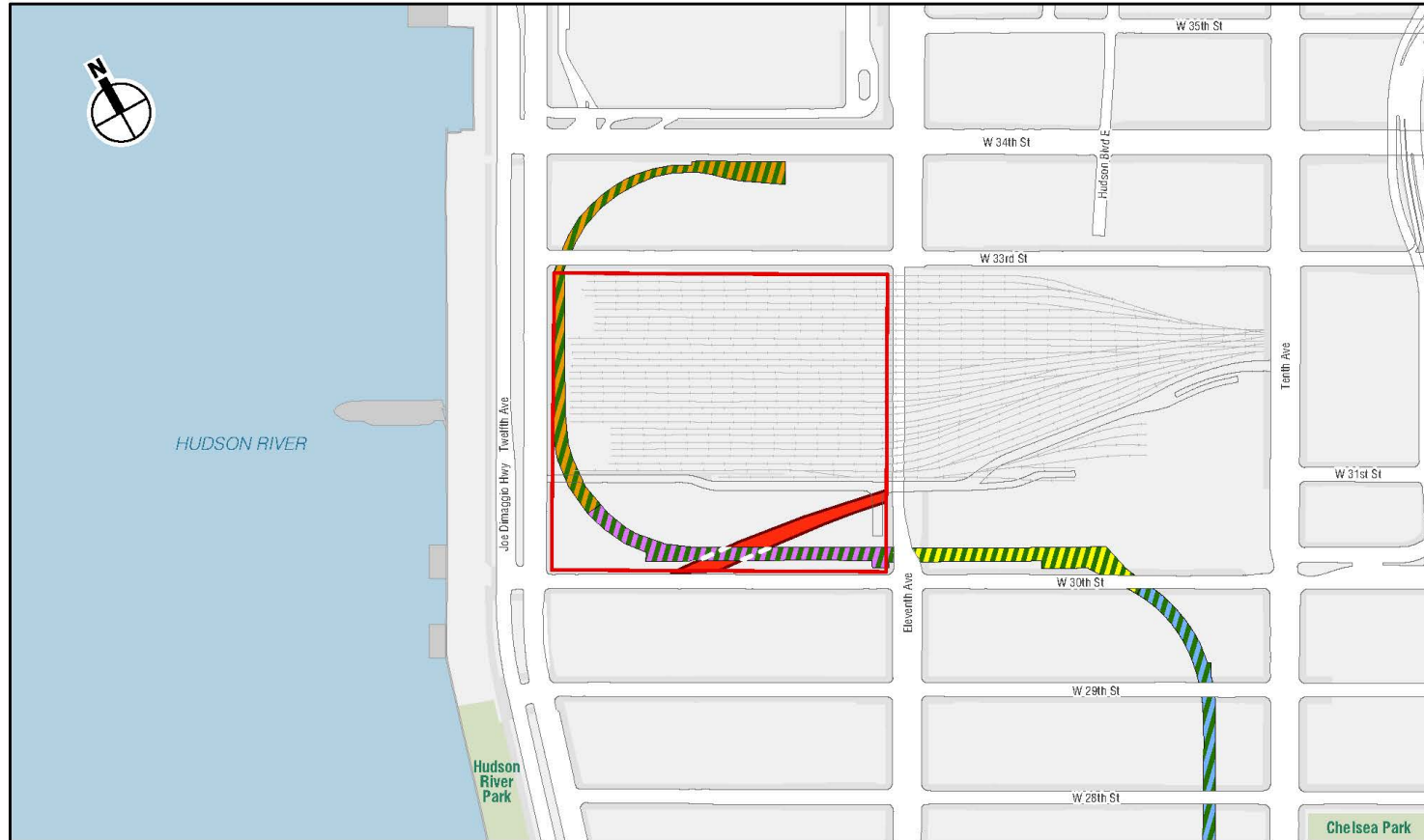
To ensure that potential construction-related effects on the High Line and the North River Tunnel are not adverse, FRA would include a condition as part of its environmental decision regarding the Preferred Alternative, requiring the Project Sponsor to develop a CEPP for the construction of the Platform and Tunnel Encasement in order to avoid the potential for construction-related effects (including vibration effects) on the High Line and the North River Tunnel. The CPP would set forth the specific protection and monitoring measures that would be implemented during construction to avoid inadvertent damage to the High Line and the North River Tunnel and would be implemented in coordination with the NYSHPO and LPC. The CPP would be required to meet the guidelines set forth in NYCDOB's *TPPN #10/88*, the *Protection for Landmarked Buildings* guidance document of the New York Landmarks Preservation Commission, and the National Park Service's *Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction*.

The following practices would be used to the extent feasible and practicable to mitigate impacts associated with construction of the Preferred Alternative (see also Chapter 8).

- Noise from construction equipment would comply with noise emission standards of New York City. These requirements mandate that certain classifications of construction equipment and motor vehicles meet specified noise emission standards, and construction material be handled and transported in such a manner to not create unnecessary noise.
- Construction of the Preferred Alternative would include sufficient mitigation to meet the NYCNCC construction noise limit of an L_{max} of 85 dB(A) at the exteriors of any adjacent residential properties.
- The Project Sponsor would be required to obtain NYCDOB approval for construction outside of weekdays 7AM to 6PM, which is prohibited by the NYCNCC. The Project Sponsor expects discretionary approval would be granted to reduce interference with LIRR operations.
- To the extent practicable given space constraints at the work sites, construction would use acoustical noise tent and/or enclosures surrounding hoe rams, jackhammers, or pavement breakers that can provide up to 15 dB(A) of noise reduction during any demolition activities. For additional noise reduction, jackhammer noise mufflers that can provide up to an additional 10 dB(A) of noise reduction can also be used.
- To minimize the noise from the backup warning alarms on trucks, vehicles would be routed through the construction sites to minimize the use of alarms. In addition, vehicles would also be equipped with OSHA-approved quieter backup alarms.
- FRA is consulting with NYC Parks to determine the appropriate steps to protect park users and ability to maintain the High Line. Proposed mitigation includes during design of the Platform, the Project Sponsor would consult with NYC Parks regarding those aspects of the design that relate to the High Line. Designs would be submitted at the preliminary and pre-final design stages, concurrent with SHPO review. If NYC Parks identifies substantive concerns with maintenance and operation access, the Project Sponsor will continue to coordination with NYC Parks to mitigate those concerns.
- Consistent with the protection and monitoring procedures that FRA would develop for the North River Tunnel, construction vibration monitoring would be required whenever construction would occur within 90 feet of the High Line structure to ensure that construction activities do not result in vibration levels that would be capable of causing damage.
- Any blasting activities associated with excavation of rock during Tunnel Encasement would be coordinated and conducted with permission from the Fire Department of the City of New York (FDNY). The Project Sponsor would provide a blasting schedule to neighboring building owners and

occupants. Construction vibration monitoring would be required during blasting activities to ensure that vibration does not exceed a level that could result in damage to any nearby buildings or structures.

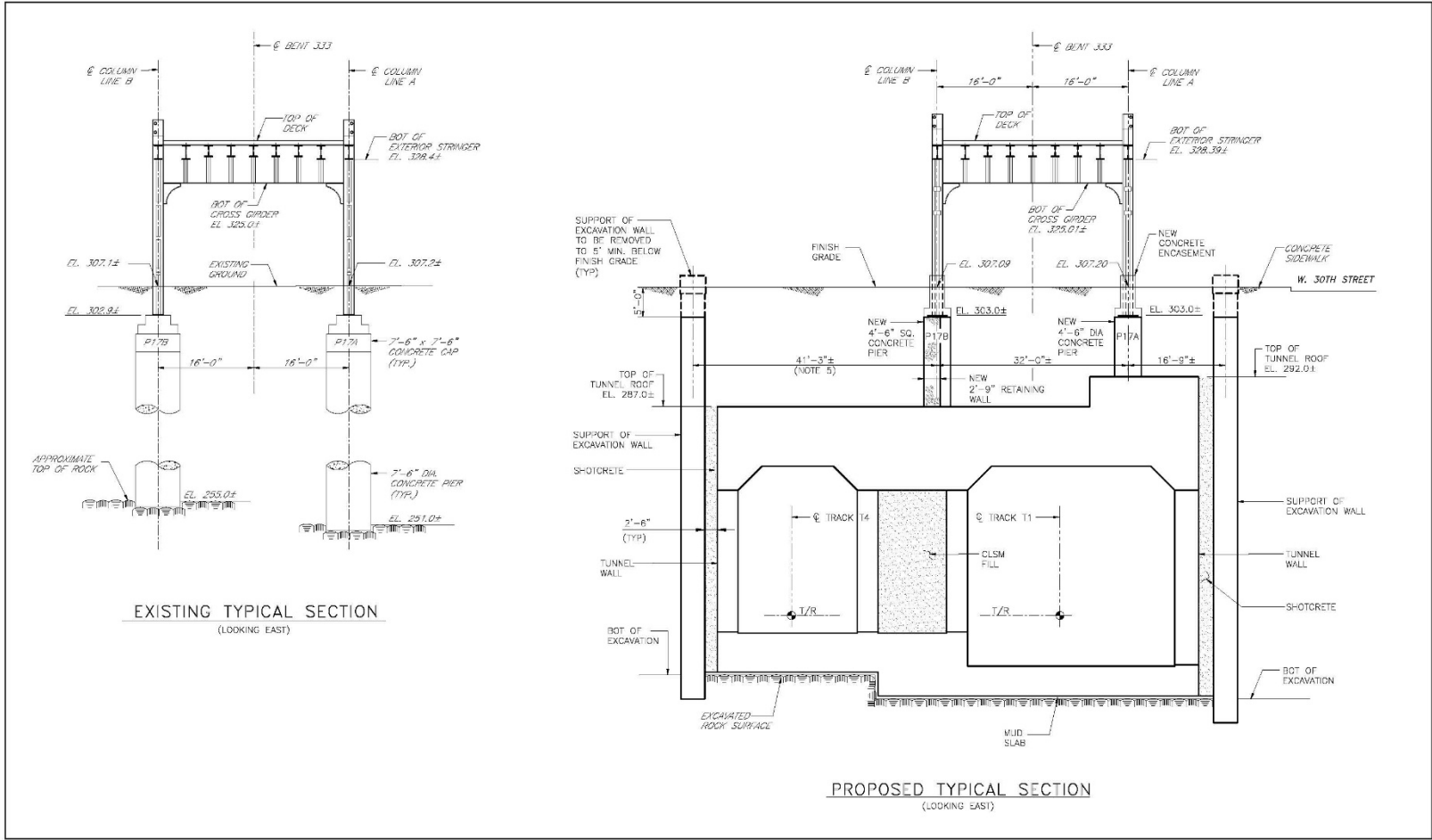
(end)



Note: Incremental changes in noise levels greater than 3 dBA exceed the CEQR Technical Manual screening threshold for construction noise.

WESTERN RAIL YARD INFRASTRUCTURE PROJECT

Worst-Case Construction Noise Levels at the High Line
Figure 8-2



High Line Structure Underpinning — Existing and Proposed Typical Sections
Figure 21-2

Attachment 6

Letter from U.S. Department of Interior dated July 23, 2021



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
5 Post Office Square, Suite 18011
Boston, Massachusetts 02109

July 23, 2021

9043.1
ER 21/0229

Andrea Poole
USDOT Federal Railroad Administration
Environment and Project Engineering Division
1200 New Jersey Ave SE
Washington, DC 20590

**Subject: Draft Environmental Impact Statement and Draft Section 4 (f) Evaluation
Western Rail Yard Infrastructure Project
New York County, New York**

Dear Ms. Poole:

The U.S. Department of the Interior (Department) has reviewed the Draft Environmental Impact Statement and Draft Section 4(f) Evaluation for the Western Rail Yard Infrastructure Project in New York County, New York. The proposed project consists of covering and protecting the active railroad tracks in the Western Rail Yard and preserving a right-of-way through the Western Rail Yard to support the future construction of a trans-Hudson passenger rail crossing into New York Penn Station. The following comments on this project are offered for your consideration.

Section 4(f) Evaluation Comments

The Department concurs with the Federal Railroad Administration (FRA) determination that noise levels at portions of the High Line Park (High Line) during construction activities for the Preferred Alternative and the temporary underpinning of the High Line would be a *de minimis* impact under Section 4(f). Since New York City (NYC) Parks is the official with jurisdiction for the High Line as a park resource, they must concur that the project will not adversely affect the activities, features, or attributes that make the High Line eligible for Section 4(f) protection, before FRA may finalize the *de minimis* impact determination. We understand that FRA is consulting with NYC Parks and have informed them of their intent to find the impacts are *de minimis* under Section 4(f). In addition, we understand that FRA has proposed measures to avoid, minimize, and mitigate harm to the High Line.

The FRA has also determined there will be no adverse effect to any historic properties in the area under Section 106, provided they complete a construction protection plan for the historic

properties in the area, which include the North River Tunnel and the High Line. In a letter dated February 11, 2021, the New York State Historic Preservation Office concurred with the Section 106 finding, and FRA is using this concurrence to support their *de minimis* finding.

The Department encourages FRA to complete their coordination with NYC Parks and provide NYC Parks concurrence with the *de minimis* finding in the final Section 4(f) Evaluation. The Department has no objection to the Section 4(f) approval, provided that a letter from NYC Parks, with their concurrence, be included in the final Section 4(f) Evaluation.

Thank you for the opportunity to review and comment on this project. If you have questions regarding these comments, please contact Mark Eberle, National Park Service, at (215) 597-1258, or mark_eberle@nps.gov. Please contact me at (617) 223-8565 if I can be of further assistance.

Sincerely,

Andrew L. Raddant
Regional Environmental Officer

cc: SHPO-NY (daniel.mackay@parks.ny.gov)